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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 05-44481
5 -----x
6 In the Matter of:
7
8 DELPHI CORPORATION,
9 Debtor.
10
11 -----x
12
13 U.S. Bankruptcy Court
14 One Bowling Green
15 New York, New York
16
17 April 7, 2006
18 10:16 a.m.
19
20 B E F O R E:
21
22 HON. ROBERT D. DRAIN
23 U.S. BANKRUPTCY JUDGE
24
25

1 DELPHI CORPORATION 2
2 MOTION for Relief from Stay filed by Victor J.
3 Mastromarco Jr. on behalf of H.E. Services
4 Company, Robert Backie.
5
6 MOTION for Relief from Stay filed by Victor J.
7 Mastromarco Jr. on behalf of Cindie Palmer.
8
9 MOTION for Relief from Stay filed by Gene T.
10 Moore on behalf of Gene T. Moore.
11
12 OBJECTION to Motion For the Appointment of A
13 Fee Committee Contained in the Motion For
14 Administrative Order Under 11 U.S.C. Section
15 331 (i) Establishing Procedures For Interim
16 Compensation and Reimbursement of Expenses of
17 Professionals and (ii) Setting A final Hearing
18 Thereon filed by Tracy Hope Davis on behalf of
19 United States Trustee.
20
21 MOTION for Relief from Stay The Offshore
22 Group's Motion Pursuant to Bankruptcy Code

23 Sections 362(d)(1) and 553 for Order Lifting
24 the Automatic Stay to Permit the Offshore
25 Group to Exercise Right of Setoff filed by

1 DELPHI CORPORATION 3

2 Kasey C. Nye on behalf of Offshore
3 International, Inc.

4

5 MOTION to Approve Motion For Order Under 11
6 U.S.C. Sections 107(b), 501, 502, And 1111(a)
7 And Fed. R. Bankr. P. 1009, 2002(a)(7),
8 3003(c)(3), And 5005(a) Establishing Bar Dates
9 For Filing Proofs Of Claim And Approving Form
10 And Manner Of Notice Thereof filed by John Wm.
11 Butler Jr. on behalf of Delphi Corporation.

12

13 MOTION for Relief from Stay To Proceed With
14 Appeals Of Patent Litigation filed by Alan D.
15 Halperin on behalf of Automotive Technologies
16 International, Inc.

17

18 MOTION to Approve Motion For Order Under 11
19 U.S.C. Section 363(b) And Fed. R. Bankr. P.
20 6004 Approving Debtors' Human Capital Hourly

21 Attrition Programs filed by John Wm. Butler
22 Jr. on behalf of Delphi Corporation.
23
24 APPLICATION for FRBP 2004 Examination - Motion
25 of the Official Committee of Unsecured

1 DELPHI CORPORATION 4
2 Creditors for an Order Compelling the
3 Production of Documents by General Motors
4 Corporation Pursuant to Rule 2004 of the
5 Federal Rules of Bankruptcy Procedure filed by
6 Robert J. Rosenberg on behalf of The Official
7 Committee Of Unsecured Creditors.
8
9 MOTION to Approve Motion For Approval Of Joint
10 Interest Agreement Between Debtors And
11 Official Committee Of Unsecured Creditors,
12 Implementation Of Protective Order, And
13 Approval Of Procedures To Protect Information
14 In Fee Statements filed by John Wm. Butler Jr.
15 on behalf of Delphi Corporation.
16
17 RESPONSE /Reply In Support Of Motion For Order

18 Under 11 U.S.C. Section 362(d)(2) Directing
19 Debtor Delphi Automotive Systems, LLC To
20 Determine Within 150 Days Whether To Assume Or
21 Reject Its Nonresidential Real Property Lease
22 With Cherokee North Kansas City, LLC Filed By
23 Jill Mazer-Marino On Behalf Of Cherokee North
24 Kansas City, LLC.
25

1	DELPHI CORPORATION	5
2	OBJECTION to Motion Debtors' Objection To	
3	Motion For Order Under 11 U.S.C. Section	
4	365(d)(2) Directing Debtor Delphi Automotive	
5	Systems, LLC To Determine Within 150 Days	
6	Whether To Assume Or Reject Its Nonresidential	
7	Real Property Lease With Cherokee North Kansas	
8	City, LLC (related document(s)[1834]) filed by	
9	John Wm. Butler Jr. on behalf of Delphi	
10	Corporation.	
11		
12	OBJECTION to Motion Appaloosa Management	
13	L.P.'s Preliminary Objection to Motion for	
14	Order Under 11 U.S.C. Section 363(b) and Fed.	
15	R. Bankr. P. 6004 Approving the Debtors' Human	

16 Capital Hourly Attrition Programs (related
17 document(s)[2933]) filed by Frank L. Eaton on
18 behalf of Appaloosa Management L.P.

19

20 STATEMENT Joinder of Appaloosa Management L.P.
21 in the Motion of the Official Committee of
22 Unsecured Creditors for an Order Compelling
23 the Production of Documents by General Motors
24 Corporation Pursuant to Rule 2004 of the
25 Federal Rules of Bankruptcy Procedure (related

1 DELPHI CORPORATION 6

2 document(s)[2961]) filed by Frank L. Eaton on
3 behalf of Appaloosa Management L.P..

4

5 RESPONSE / Limited Response of General Motors
6 Corporation to Debtors' Motion for Approval of
7 Joint Interest Agreement between Debtors and
8 Official Committee of Unsecured Creditors,
9 Implementation of Protective Order and
10 Approval of Procedures to Protect Information
11 in Fee Statements (related document(s)[3000])
12 filed by Michael P. Kessler on behalf of

13 General Motors Corporation.

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24 Transcribed By: Esther Accardi

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1 DELPHI CORPORATION 11

2 P R O C E E D I N G S

3 THE COURT: Please be seated.

4 Okay. This is a Delphi omnibus day. So,
5 Mr. Butler.

6 MR. BUTLER: Your Honor, good
7 morning. Jack Butler from Skadden Arps
8 Slate Meagher & Flom, LLP. With my
9 partners David Springer and Kayalyn
10 Marafioti. Here on behalf of the debtors
11 in connection with their sixth omnibus
12 hearing. Your Honor, we have filed and
13 served in accordance with the case
14 management order a proposed sixth omnibus
15 hearing agenda and would ask Your Honor's
16 permission to follow the order of the
17 agenda.

18 THE COURT: Okay. That's fine.

19 MR. BUTLER: Your Honor, the first
20 three matters on the agenda all are
21 orders to show cause. Behr Industries,
22 JST Mfg. and Deutsche Dagan and they're
23 to be represented by Mr. Berger.

24 MR. BERGER: Good morning, Judge.
25 Neil Berger, Togut Segal & Segal, for the

1 DELPHI CORPORATION 12
2 debtors. First matter is Behr
3 Industries. Your Honor may recall that
4 this was an order to show cause
5 concerning a payment post-petition on
6 account of pre-petition obligations
7 totaling approximately 1.1 million
8 dollars. And that the center of this
9 dispute was the financial ability of Behr
10 to respond and their qualification under
11 the central vendor or rescue program.
12 We've had a lot of discovery, a lot of
13 financial production. This matter's been
14 settled. We hoped that a settlement
15 agreement could have been signed this
16 morning, there's one or two sentences
17 that need to be corrected. We're
18 confident that we'll be able to submit an
19 order to Your Honor next week.

20 THE COURT: Okay.

21 MR. BERGER: The next is JST
22 Manufacturing. I know JST's counsel is
23 here. This matter is also settled.

24 There's a framework for a settlement much
25 like what we had approved by Your Honor

1 DELPHI CORPORATION 13

2 in the Schmidt matter. There are a
3 series of separate purchase orders. A
4 number of them are essential for the
5 debtor's continued operations and the
6 framework for the JST settlement
7 contemplates a non-conforming assumption
8 of certain of those purchase orders, the
9 retention of funds on those purchase
10 orders as cure costs, and a return of
11 funds to the debtor. So that also is a
12 framework of a settlement that's
13 favorable to the debtors and, again, our
14 hope is that that matter will also be
15 resolved and an order submitted before we
16 see Your Honor again next time.

17 THE COURT: Okay.

18 MR. BERGER: Deutsche Dagan, this
19 is the foreign vendor issue. Hague
20 process still has not been completed, but

21 we also have begun to negotiate a
22 settlement also contemplating a non-
23 conforming assumption of certain of the
24 purchase orders, likely some cash coming
25 back to the estate, so I'm staying with

1 DELPHI CORPORATION 14
2 Deutsche Dagan as a cure. This framework
3 is also favorable to the debtors and
4 we'll try our best to settle it before we
5 come back to see you.

6 THE COURT: Okay. But in any event
7 it's being adjourned to the 12th of May?

8 MR. BERGER: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. BERGER: For purposes of
11 carrying it on the agenda, all three
12 matters ought to be carried, but our hope
13 is certainly as to JST and Behr that they
14 won't appear on the next agenda because
15 we'll have had orders entered by Your
16 Honor.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, the next

19 two matters, matters 4 and 5, we take
20 together, is H.E. Services Company, lift
21 stay motion at docket number 2705 and
22 Cindie Palmer, lift stay motion at docket
23 number 2708. The agenda indicates by
24 agreement of the parties these matters be
25 adjourned to the May 12th, 2006 hearing.

1 DELPHI CORPORATION 15
2 I understand counsel for the movant filed
3 an objection last night indicating that
4 they did not agree to the adjournment. I
5 have e-mail correspondence to confirm it
6 on three different occasions. I can go
7 through the litany, Your Honor, but the
8 bottom line here is as of March 24th, we
9 had e-mail confirmation from the movant's
10 law firms that the matters were to be
11 adjourned. We did not file objections.
12 These motions and the forms of order are
13 highly objectionable. If Your Honor
14 looks at the forms of order, they propose
15 that the claims be allowed with respect

16 to these motions in a setoff motion. But
17 we didn't go through and prepare for this
18 hearing. In our view, under the case
19 management, order should be heard at the
20 May 12th omnibus hearing. And depending
21 how much Your Honor wants to hear, I can
22 go through the litany of e-mail
23 correspondence and other traffic.

24 THE COURT: All right.

25 MR. MASTROMARCO: Your Honor, may I

1 DELPHI CORPORATION 16
2 address the Court?

3 THE COURT: Yes.

4 MR. MASTROMARCO: Victor
5 Mastromarco on behalf of H.E. Services,
6 under 2705 and also the estate of Michael
7 Palmer under 2708. I want to indicate to
8 the Court that there was no agreement
9 that was reached. And Mr. Butler had no
10 personal involvement in these issues.
11 And let me indicate that we made it clear
12 before they ever filed their proposed
13 agenda today that we were coming out here

14 and they knew that on the 31st of March
15 which was the date at 9 o'clock in the
16 morning when they had all day to file
17 their response. They chose not to.

18 THE COURT: Well, this is probably
19 easily explainable. I mean, do you have
20 a copy of the e-mails that Mr. Butler's
21 referring to?

22 MR. MASTROMARCO: Yes, I do. The
23 e-mail that I am going to --

24 THE COURT: Well, can you give me a
25 copy?

1 DELPHI CORPORATION 17

2 MR. MASTROMARCO: Yes, I will.

3 MR. BUTLER: I did the entire
4 chain, Your Honor.

5 THE COURT: Okay. All right, why
6 don't you give me that, Mr. Butler?

7 MR. BUTLER: May I approach, Your
8 Honor?

9 THE COURT: Yes.

10 MR. MASTROMARCO: Your Honor, may I

11 --

12 THE COURT: Let me just take some
13 time to read it.

14 MR. MASTROMARCO: Sure.

15 THE COURT: Okay.

16 MR. MASTROMARCO: Your Honor, may I
17 address the Court?

18 THE COURT: I've read them, yeah.

19 MR. MASTROMARCO: Thank you. We
20 were first contacted on March 21 of 2006
21 by a Matt McKelly, an associate with the
22 Butler office and Skadden Arps. Is there
23 something funny? I'm sorry?

24 THE COURT: I know Mr. Butler's a
25 prominent lawyer, but I don't think

1 DELPHI CORPORATION 18

2 they'd refer to it as the Butler office.

3 MR. MASTROMARCO: Okay. Well, I'm
4 sure his partners might object to that.

5 THE COURT: All right. The name
6 may be somewhere, on a door somewhere but

7 --

8 MR. MASTROMARCO: Well, it is on

9 the top of the pleadings, so --

10 THE COURT: Okay.

11 MR. MASTROMARCO: Let me indicate
12 that, at that time, the associate talked
13 to one of the associates of my office,
14 asked for an adjournment of the hearing
15 today and indicated that they would reset
16 the motion for the next hearing date. On
17 March 24th, my associate agreed to the
18 continuance --

19 THE COURT: Actually, are you
20 referring to the e-mail? The e-mail
21 doesn't say that.

22 MR. MASTROMARCO: No, I'm talking
23 about their discussions on the phone.

24 THE COURT: Oh, I see. As opposed
25 to the e-mail.

1 DELPHI CORPORATION

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2 MR. MASTROMARCO: Well, exactly.

3 THE COURT: All right.

4 MR. MASTROMARCO: I mean what
5 they're saying and what they're doing

6 are, like, two different things, I'm
7 finding out.

8 THE COURT: Okay.

9 MR. MASTROMARCO: March 24th, 2006,
10 we talked to them, agreed to and that it
11 would be heard the next hearing date. On
12 March 26th -- the 28th, I'm sorry, we
13 received an e-mail saying they're just
14 going to continue the motion off
15 calendar. So on March 31, there's an e-
16 mail at 8:27 a.m. from us indicating I do
17 not agreed to the hearing unless it is
18 renoticed for the next hearing date. And
19 they write back an hour later and they
20 say, your e-mail agreeing to the
21 continuance and it is not contingent on
22 continuing the matter to the next
23 hearing. It was at that point I got on
24 the phone with Mr. Meisler and indicated
25 that we were going forward with the

1 DELPHI CORPORATION 20
2 motion and I followed that up with a
3 letter of April 3rd, specifically

4 indicating, and I have that which I don't
5 believe you've been supplied, the
6 situation. The fact that we would agree
7 if they wanted to file a late objection,
8 we would stipulate to that. They chose
9 not to do that. And instead, filed this
10 proposed agenda indicating that we agreed
11 to something that they knew we were
12 objecting to. So they filed with this
13 Court something they knew we were
14 objecting to at the time they filed it.
15 I'm here; I'm ready to argue the motion.

16 THE COURT: Well, there's one thing
17 that's clear, I'm not going to have
18 arguments on the motion today. Just
19 reading the e-mail, it says from Mr.
20 McKelly, March 21st, "that as I
21 described", which I assume means that
22 refers to their conversation, "Delphi and
23 your clients would each be permitted,
24 seek to restore the motions to a future
25 omnibus hearing agenda by giving each

1 DELPHI CORPORATION 21

2 other not less than 14 days prior written

3 notice, e-mail is sufficient. Such

4 notice would not have to be given to any

5 party other than Delphi or H.E. Services

6 Company, Robert Backie or Cindie Palmer.

7 Please let me know if a continuance under

8 these terms is acceptable to you." Then

9 he has a follow-up e-mail on the 24th.

10 "I'm writing to follow up on the e-mail

11 below", which is the one I just read.

12 "Have you had a chance to review the

13 proposal and make a decision as to the

14 continuance?" And there's an e-mail back

15 18 minutes later. "I can agree to the

16 continuance." That appears to me to be

17 crystal clear. Moreover, if you wanted

18 to get it back on the calendar for the

19 next hearing date, you could have done so

20 at any time thereafter and been in

21 perfect compliance with what you want and

22 what they agreed, which is to have it on

23 the next hearing date. So I don't know

24 why this is --

25 MR. MASTROMARCO: Your Honor, if I

1 DELPHI CORPORATION 22

2 may. It's the March 28th.

3 THE COURT: Well, when is the next
4 hearing date?

5 MR. BUTLER: May 12th, Your Honor.

6 MR. MASTROMARCO: It's May 12th.

7 THE COURT: So you can get it on
8 for May 12th, which is the next hearing
9 date. And you did that by your March
10 31st letter, saying I want it on the next
11 hearing date. So, pursuant to the
12 proposal that your associate agreed to on
13 March 24th, you can put it on and it's on
14 for the next hearing date.

15 MR. MASTROMARCO: All right. Thank
16 you, Your Honor.

17 THE COURT: Okay. Nothing
18 mysterious about that at all, or
19 underhanded. All right.

20 MR. BUTLER: Your Honor, the next
21 matter on the agenda, matter number 6, is
22 the creditors' committee application for
23 the Jefferies & Co., docket number 1948.

24 Mr. Rosenberg is handling that for the
25 committee and Mr. Togut's handling for

1 DELPHI CORPORATION 23
2 the debtors.

3 THE COURT: Okay.

4 MR. ROSENBERG: Good morning, Your
5 Honor, Robert Rosenberg, Latham &
6 Watkins, for the creditors' committee.
7 We have reached an agreement with the
8 debtor to make a minor change in the
9 Jefferies retention letter and order
10 approving that letter. And we have
11 submitted an order to the Court which we
12 found a typo in and therefore will
13 resubmit a new order that would approve
14 the retention of Jefferies as and on an
15 interim basis pursuant to the terms of
16 the retention agreement as we negotiated.
17 It would then be served on a 45-day
18 notice pursuant to the requirements of
19 the U.S. Trustee for a final hearing.
20 The difference, Your Honor, between what
21 was previously submitted to you and the

22 settled version involves a single point.
23 As Your Honor may recall, the Jefferies
24 retention provided for a 328 retention
25 for monthly fees and a bonus based upon a

1 DELPHI CORPORATION 24
2 formula based upon return to unsecured
3 creditors. It also, however, had a
4 proviso that said that Jefferies retain
5 the right to apply to this Court for
6 additional compensation on a, you know,
7 whatever basis they chose to do so. Not
8 as a 328 matter. The negotiated
9 solution, Your Honor, is to limit
10 Jefferies's right to come back to this
11 Court to a two million dollar cap. It is
12 no longer open-ended. It would be
13 limited to two million dollars. Mr.
14 Togut has asked me to put on the record
15 that nobody has agreed to any additional
16 compensation. I would have thought that
17 was clear because nobody has asked for
18 any additional compensation. It is

19 merely the reservation of right to ask
20 for an additional two million dollars.

21 THE COURT: And the reservation's
22 still asking for it under something other
23 than Section 328's standard?

24 MR. ROSENBERG: That's correct,
25 Your Honor. It's in the discretion of

1 DELPHI CORPORATION 25
2 the Court. And, of course, all parties
3 reserve their right to object if asked
4 for.

5 THE COURT: Right. Okay. All
6 right.

7 MR. TOGUT: Good morning, Your
8 Honor. Albert Togut, Togut Segal &
9 Segal. I only rise because Mr. Rosenberg
10 stated something that I think -- well,
11 that I know is different from the
12 debtor's understanding. He used the word
13 cap. The retention -- the engagement
14 letter with Jefferies provides for a
15 transaction fee of not less than two and
16 not more than ten million dollars. Which

17 is defined to be the cap, the ten million
18 dollars. Our view is, a cap is a cap is
19 a cap. After describing the cap, the
20 engagement letter went on to say, "but
21 Jefferies reserves the right to apply for
22 more." We didn't want to get into a big
23 fight now about Jefferies's entitlement
24 to any more. We didn't think it made any
25 sense and it may be under the formula

1 DELPHI CORPORATION 26

2 contained in that engagement letter.

3 They'll never even reach the ten million

4 dollar cap. So to waste court time over

5 their entitlement to anything beyond the

6 cap, at this point, we didn't view to be

7 a productive use of the Court's time.

8 What we did, though, is we put a limit on

9 what they might ask for above the cap.

10 We don't agree that they're entitled to

11 any more, we're not conceding that

12 they're entitled to any more, we just

13 limited the extent of that fight, if it

14 ever happens, at the end of the case when
15 Jefferies applies for compensation.

16 THE COURT: Okay. I thought that's
17 what Mr. Rosenberg said, that -- are you
18 just saying that the two million is sort
19 of a like a Cat in the Hat cap, it's an
20 extra cap on top of the cap?

21 MR. TOGUT: I think that's a pretty
22 good way to describe it.

23 THE COURT: Okay.

24 MR. TOGUT: Thank you, Your Honor.

25 THE COURT: Okay. Thanks.

1 DELPHI CORPORATION 27

2 MS. LEONHARD: Good morning, Your
3 Honor. Alicia Leonhard, for the United
4 States Trustee, Your Honor. The U.S.
5 Trustee engaged in significant
6 negotiations with Jefferies and the
7 committee and I have signed off on the
8 interim order.

9 THE COURT: Okay.

10 MS. LEONARD: Thank you.

11 THE COURT: All right. And, of

12 course, this is -- because it's seeking,
13 except for the part we just spent talking
14 about, approval under Section 328(a),
15 it's going to go out on wide notice as is
16 the practice in this district?

17 MS. LEONHARD: That's correct, Your
18 Honor. It'll go out on notice -- 45-days
19 notice to all creditors.

20 THE COURT: Okay.

21 MS. LEONHARD: Thank you.

22 THE COURT: You have your
23 reservation, in any event, under 330?

24 MS. LEONHARD: That's correct.

25 THE COURT: Okay. All right.

1 DELPHI CORPORATION 28

2 Well, I'll approve the retention on an
3 interim basis.

4 MR. TOGUT: Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. BUTLER: Your Honor, the next
7 matter on the agenda is the bar date
8 motion, it's at docket number 2866. No

9 objections have been filed to this.
10 We've come, Your Honor, to the point in
11 the case where the debtors think it is
12 desirable and reasonable to ask the Court
13 to begin the process of claims
14 administration in these cases. By
15 establishing a general bar date which the
16 debtors propose be July 31st, 2006 at
17 5:00 p.m. prevailing Eastern time. And
18 it also has several other aspects to the
19 relief requested. It indicates, with
20 respect to an amended schedule bar date,
21 that to the extent we amend our schedules
22 and if someone is affected by that
23 amendment they would have the later of
24 the general bar date or 30 days after
25 they've given notice of the change that

1 DELPHI CORPORATION 29
2 pertains to them. We ask for a separate
3 rejection bar date which would be the
4 later of the general bar date or 30 days
5 after the effective date of an order
6 authorizing the rejection of an executory

7 contract or unexpired lease. In this
8 case the governmental unit bar date, is
9 the same as the general bar date because
10 it complies with statute on that basis.
11 The proposed date, being more than 180
12 days after the petition date. We also,
13 Your Honor, have set out, in the motion
14 and in the proposed order, extensive
15 procedures for noticing this out, to whom
16 the notice would go and to whom it would
17 apply or not apply. We propose to -- if
18 Your Honor approves this today, to notice
19 this out no later than April 20th. That
20 will give creditors slightly more than a
21 hundred days notice of the bar dates.
22 That's about five times what Bankruptcy
23 Rule 200287 requires. But this is a
24 larger case and we thought it was
25 important to give a more extended notice

1 DELPHI CORPORATION 30
2 period. We also proposed, Your Honor, to
3 give notice of the bar date by

4 publication in almost 40 separate
5 international, national and local
6 editions. That would occur on or about
7 April 21st, 2006, and we've listed the
8 publications that would -- in which those
9 notice would be filed. Your Honor, I'm
10 not going to go through, particularly in
11 light of the lack of objection from any
12 party, I'm not going to go through who
13 the bar date would apply to and who would
14 be excluded. Those are outlined clearly
15 in the procedures. We do provide,
16 however, that this bar date arrangement
17 as to the parties that it applies to, for
18 the general bar date, would have
19 preclusive effect. That the failure to
20 file a proof of claim would, in fact,
21 cause someone who's not otherwise listed
22 as undisputed and otherwise allowable
23 under the schedules, would preclude them
24 from being forever able to assert a claim
25 against the debtors as -- and other

2 parties; we've indicated in the specifics
3 of the bar date notice and order. Your
4 Honor, this is -- because of the size and
5 complexity of this case, it's a fairly
6 large undertaking to -- in terms of the
7 number of the scope of the particular
8 notice. But we've tried to lay it out in
9 detail. A couple of other things I would
10 note, Your Honor. The proposed order we
11 have is slightly different than the order
12 that we had submitted. I have a black-
13 line to present to the Court, if that
14 would be acceptable, just to make sure
15 the Court sees it.

16 THE COURT: Okay. That's fine.

17 MR. BUTLER: May I approach?

18 THE COURT: Yes.

19 MR. BUTLER: Your Honor, the
20 primary change's here are in Paragraph 10
21 and this just has to do with the filing
22 of master proofs of claim -- it's a
23 master proof of claim provision for the
24 pre-petition lenders which the pre-
25 petition lenders asked to have inserted.

1 DELPHI CORPORATION 32

2 I should indicate to you, we've also had
3 discussions with the Pension Benefit
4 Guaranty Corporation about the filing of
5 their claims and they've indicated to us
6 that they intend to bring a separate
7 motion on to get authority from the Court
8 in how they would file their claims,
9 which they assert would be against each
10 and all of the debtors. And they have a
11 number of different claims they'd file as
12 to each and they will bring that on by
13 separate motion. We've spoken about
14 that.

15 THE COURT: Okay.

16 MR. BUTLER: Your Honor, I don't
17 have anything else for the Court unless
18 the Court has questions or comments.

19 THE COURT: Well, I guess, as you
20 did with the indenture trustees and the
21 bank agent, I was wondering had you had
22 any discussion with the unions? I had
23 some concern that individual employees
24 might feel that -- not relating to any

25 personal claims they may have, but just

1 DELPHI CORPORATION 33

2 because of the issues that have been
3 percolating involving the unions, that
4 they might feel that they would have to
5 file a proof of claim for that purpose.
6 Is there any concept of, you know,
7 telling people in the notice, or the
8 unions telling their own people, so that
9 they wouldn't inundate us with, you know,
10 20,000 claims just on that basis?

11 MR. BUTLER: Your Honor, we've had
12 some discussions about that. There's a
13 specific carve-out with respect to any
14 claims relating to post-retirement health
15 benefits, OPEB and pension benefits.

16 THE COURT: I was more focused on
17 the notice than the order. And if the
18 union is going to be giving people that
19 type of notice, that's fine. I just
20 don't want people to feel like they're
21 doing something when they don't have to.

22 MR. BUTLER: Our concern, Your
23 Honor, is that if an employee has some
24 other claim they want to provide --
25 THE COURT: I know.

1 DELPHI CORPORATION 34

2 MR. BUTLER: -- we don't want to
3 find out about that or let that ride
4 through the case.

5 THE COURT: No.

6 MR. BUTLER: So we have provided
7 for specific exclusions that we think go
8 to the heart of the issues in the case.
9 But we're unwilling to sort of allow any
10 set of claims. And we have one
11 employee's claim on file already, that,
12 you know, for seventy million or a
13 hundred million dollars, or some theory.

14 THE COURT: Right.

15 MR. BUTLER: And we need to be able
16 to understand those claims.

17 THE COURT: Well, the order's fine.
18 Again, I just -- maybe this lies with the
19 unions in terms of informing their

20 members that -- to the extent they're no asserting
21 their own individualized claims, the
22 union will be filing a claim on their
23 behalf, or something like that.

24 UNIDENTIFIED ATTORNEY: Thank you,
25 Your Honor. Very much appreciate your

1 DELPHI CORPORATION 35

2 comments. And it was really comments
3 along those lines that we did discuss
4 with Mr. Butler's office. We do face a
5 sort of administrative issue, you know,
6 frequently in cases. And, I believe, I
7 haven't discussed it yet with the UAW,
8 but typically a notice or the word gets
9 out that for collectively bargained
10 matters the union files a claims on
11 behalf of the bargaining unit members or,
12 in our case, UAW represented persons, but
13 that there would be a difference for
14 specific non-collectively bargained
15 claims.

16 THE COURT: Right.

17 UNIDENTIFIED ATTORNEY: But I very
18 much appreciate the observation.

19 THE COURT: All right. Well, I'm
20 not going to impose that burden on the
21 union or the unions, but I think it would
22 be useful for them to consider
23 sending out a notice like that somehow,
24 however they communicate with their
25 members, so that they wouldn't feel like

1 DELPHI CORPORATION 36
2 they have to file claims for collectively
3 bargained claims.

4 UNIDENTIFIED ATTORNEY: Your Honor,
5 I'll see how they've done it in the past.
6 I'm sure there's a communication
7 apparatus that we can take advantage of.

8 THE COURT: Okay.

9 MR. KENNEDY: Your Honor, I just
10 wanted to note for the IUE, Tom Kennedy
11 for the IUE. To the extent there's an
12 unresolved 1113 issue pending at time of
13 the bar date, I would hope the Court
14 would consider extending that bar date

15 for the purpose of both enabling any
16 claims that have to be made, whether
17 they're individual or on behalf of our
18 unions.

19 THE COURT: Well, that would be
20 down the road.

21 MR. ROSENBERG: Your Honor, the
22 changes in this document had not been
23 discussed with the committee, nor had I
24 seen this proposed order before. So I
25 would simply ask the Court's indulgence

1 DELPHI CORPORATION 37
2 before you sign it to give us a
3 reasonable opportunity to review it.

4 THE COURT: Okay.

5 MR. ROSENBERG: Thank you.

6 THE COURT: All right. That's
7 fine. Again, the changes -- as I
8 understand it, they go just to letting
9 the bank agent file a master proof of
10 claim.

11 MR. BUTLER: Right.

12 THE COURT: And picking up
13 subordinated indenture trustees as well
14 as regular ones.

15 MR. BUTLER: Correct, Your Honor.

16 I don't know why --

17 THE COURT: I think, knowing the
18 abilities of the two counselors who spoke
19 up, it won't take too long to review it.

20 Probably, we'll get it on Monday.

21 Otherwise, it appears to me to conform to
22 the guidelines here for bar date orders
23 and notices. So with that caveat, unless
24 I hear something by Monday, it will get
25 entered.

1 DELPHI CORPORATION 38

2 MR. BUTLER: Thank you, Your Honor.
3 Your Honor, before we move to the
4 contested docket, can we take about a ten
5 minute recess, please?

6 THE COURT: Okay. All right.

7 MR. BUTLER: Thank you.

8 (Recess at 10:42 a.m.)

9 THE COURT: Please be seated. All

10 right, we're back on the record in
11 Delphi.
12 MR. BUTLER: Thank you, Your Honor.
13 And thank you for the recess. Your
14 Honor, I wanted to address the balance of
15 the hearing, and get some guidance from
16 the Court. We have under contested
17 matters, just to run through them with
18 Your Honor, so Your Honor's aware of how
19 to proceed today. The interim
20 compensation matter I have brief
21 presentation but there is an agreement in
22 principle between the United States
23 Trustee, the creditors' committee and the
24 debtors about the form of order and the
25 protocol.

1 DELPHI CORPORATION 39
2 THE COURT: Okay.
3 MR. BUTLER: I'll describe that to
4 you in a few minutes. Number 9,
5 Cherokee, is the first of two evidentiary
6 hearings. I expect it to be the shorter

7 of the two hearings. And this goes to
8 whether or not Cherokee can demonstrate
9 cause under 365(d)(2) to change or to get
10 carved out of the prior 365(d)(4)
11 extension. We have then three lift stay
12 motions, O'Neill, Offshore Group and
13 Automotive Technologies which are not
14 evidentiary hearings but they are final
15 hearings. But there is no testimony
16 planned in those three hearings. Matter
17 number 13, is the Human Capital Hourly
18 Attrition Program motion. It is an
19 evidentiary hearing. It is contested and
20 I expect that to take the balance of the
21 time that we'll have for the hearing
22 today. And then 14 and 15, the motion to
23 compel production of GM documents in the
24 joint interest agreement I think are very
25 limited, are not evidentiary in nature.

1 DELPHI CORPORATION 40
2 And one may, in fact, may be resolved.
3 But there's some statements that need to
4 be made on the record. And the number

5 16, the Bank of America summons matter
6 has been adjourned to the May 12th
7 hearing, with Your Honor's permission.

8 THE COURT: Okay.

9 MR. BUTLER: So, what I was going
10 to try to suggest, and so people can give
11 some preparation, Your Honor, and be able
12 to know what's going to happen today, I
13 was going to suggest that we try to get
14 through all the agenda matters but for
15 the Hourly or the Human Capital Hourly
16 Attrition Program before the lunch break.

17 THE COURT: Okay.

18 MR. BUTLER: And then come back at
19 whatever time Your Honor sets. I was
20 thinking we can get done by 12:30 with
21 everything else and then come back, if it
22 makes sense to the Court, around 1:30 and
23 begin that hearing. For the people who
24 are in the courtroom who are here only
25 for that purpose, don't necessarily have

2 to sit through 90 minutes of other
3 matters.

4 THE COURT: All right. That sounds
5 fine to me.

6 MR. BUTLER: Okay. So, if there's
7 anybody -- just before we move forward
8 into the docket, if there's anybody in
9 the courtroom who is here only on item
10 number 13, agenda item number 13, that
11 matter will not be brought up before 1:30
12 this afternoon. So if anybody wants to
13 excuse themselves at this point, I'll
14 just take a minute before we do that.
15 And then, Your Honor, we would move on
16 beginning with the interim compensation
17 matter.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, the next
20 matter on the agenda is the interim
21 compensation matter. This goes back to
22 docket number 11, one of our first day
23 orders. It's been carried on a number of
24 months as the U.S. Trustee, the
25 creditors' committee, the debtors have

1 DELPHI CORPORATION 42
2 been trying to navigate through the
3 debtor's proposal for the formation of a
4 committee. Your Honor on March 8th
5 entered an order that basically directed
6 that today would be a final hearing on
7 this matter, absent an agreed order
8 between those three parties. I can
9 report to Your Honor that we have an
10 agreement in principle as to the form of
11 order and the fee committee and fee
12 procedures protocol. I just want to
13 outline the material deviations from the
14 protocol that was submitted to Your
15 Honor. We're going to finish drafting it
16 up over the weekend and, with Your
17 Honor's permission, submit it to chambers
18 on Monday. But that would be for
19 settlement purposes only. We're not --
20 we want to get the words right, but
21 understand we want to present to Your
22 Honor for Your Honor's review.
23 THE COURT: Okay.
24 MR. BUTLER: The fee committee

25 would add -- I'm paying attention now to

1 DELPHI CORPORATION 43
2 the black-lined protocol -- but the fee
3 committee that would be established here
4 would be three voting members instead of
5 five. Which is the request of the United
6 States Trustee, that's what it was in
7 Adelphia and they believe that will
8 function appropriately. But they have
9 made it clear that's three voting members
10 and have acknowledged for the debtors we
11 can have multiple attendees among our
12 officers. So our general counselor,
13 chief restructuring officer, chief
14 financial officer are going to
15 participate in the process, but the
16 debtors would have one vote. And the
17 U.S. Trustee would be the second -- or
18 its designator would be the second and
19 the creditors' committee designee would
20 be the third. So that's the first major
21 change. Second change is the portion of
22 the protocol which had been in Adelphia

23 but which, at the request of the
24 creditors' committee, we have removed, is
25 one that -- is a paragraph that deals

1 DELPHI CORPORATION 44
2 with -- again, in composition how
3 attorneys who are retained professionals
4 might interact with this committee. And
5 we believe, and we've all agreed -- the
6 U.S. Trustee has agreed to deviate from
7 the Adelphia protocol to make it clear
8 that retained professionals' interaction
9 with the committee will solely be in
10 connection with the official business of
11 the committee. None of the retained
12 professionals are going to advise or
13 represent anybody on the committee with
14 respect to fee committee matters.

15 THE COURT: Okay.

16 MR. BUTLER: That's the second
17 change of principle. Third, because this
18 is picking up in midstream and we'll
19 start for the third fee application

20 period that's starting in June, there is
21 a provision that would require everyone
22 in their first budgets, there's a
23 budgeting process here which the debtors
24 believe is among the most important
25 aspects of this protocol. There is a

1 DELPHI CORPORATION 45
2 requirement that everybody provide the
3 fee committee with historical monthly
4 information. It had been suggested here
5 that the people should try to allocate
6 that historical information based on the
7 billing task codes affirmed by the fee
8 committee. And it was concluded that
9 would simply be too cumbersome. So
10 people would give their historicals, or
11 however they billed them in their fee
12 applications in monthly comps, will
13 provide that historical information. It
14 was also agreed, Your Honor, that a
15 deviation from a budget cannot be the
16 basis for a fee committee objection. And
17 the fee committee can object based on,

18 you know, any number of things relating
19 to reasonableness and guidelines in the
20 statute. But they can't use the
21 budgeting process itself for purposes of
22 using that as a basis to object. And
23 that was -- we had earlier said that
24 shouldn't be the sole basis, but the
25 agreement with the committee and U.S.

1 DELPHI CORPORATION 46
2 Trustee is that would not be an
3 independent basis to object. And in the
4 last material change in the protocol --
5 actually, I think that is -- those are
6 the three material changes in the
7 protocol. We all have reserved the right
8 to wordsmith over the weekend for
9 clarification purposes, but none of those
10 changes would be material from that which
11 is in the protocol submitted to Your
12 Honor and as I have placed on the record.
13 But we'll otherwise submit an agreed
14 order, Your Honor, on Monday, if this

15 approach is acceptable to the Court.

16 THE COURT: Okay. All right. The

17 approach is definitely acceptable to me.

18 I agree with you that the budgeting

19 process is by far the most important

20 aspect of this committee. Although, I

21 also think it's valuable to have a

22 committee like this to be given the specific

23 task of dealing with fees before the fee

24 application process. That's why I've

25 encouraged it, and the two non-

1 DELPHI CORPORATION

47

2 governmental members are clearly

3 providing a real service to the estate

4 and they're doing so really just in

5 return for getting their expenses paid,

6 so it's very valuable. I note, that

7 there's simply a reservation with regard

8 to a possible future retention of a fee

9 examiner. As I've said before, I think

10 that, at best, those sorts of examiners

11 are somewhat valuable because they have

12 computer programs to scan fee

13 applications. But it's my hope that at
14 some point Congress will appropriate
15 money to the U.S. Trustee's office so
16 they can develop their own computer
17 program that they can apply to all cases
18 and get around this expense which, I
19 think, may be warranted in some cases.
20 But the government should come up with
21 the money so that they could do it
22 themselves.

23 MR. BUTLER: Thank you, Your Honor.

24 So --

25 THE COURT: So, I'll look for that

1 DELPHI CORPORATION 48
2 order and obviously everyone's rights are
3 reserved.

4 MR. BUTLER: Thank you, Your Honor.

5 THE COURT: As to the wording, as
6 opposed to the concepts.

7 MS. LEONHARD: Good morning, Your
8 Honor. Alicia Leonhard, appearing for
9 the United States Trustee. I just wanted

10 to echo what Mr. Butler said and thank
11 Mr. Butler and Mr. Rosenberg for working
12 very hard to come up with an agreement.
13 I also wanted to ask if I can be excused,
14 Your Honor, I have pressing business in
15 the office.

16 THE COURT: Yes, that's fine.

17 MS. LEONHARD: Thank you very much.

18 THE COURT: Okay.

19 MR. BUTLER: Your Honor, the next
20 matter on the agenda is the Cherokee
21 motion directing assumption or rejection.
22 As I indicated, this is a request by
23 Cherokee North Kansas City, LLC, at
24 docket number 1834, to seek an order
25 under 365(d)(2) to shorten the time that

1 DELPHI CORPORATION 49
2 the debtors have to assume or reject a
3 particular on residential or property
4 lease. And since the movant has the
5 burden of proof, we'll cede the podium to
6 counsel representing Cherokee.

7 THE COURT: Okay.

8 MR. GARFIELD: Good morning, Your
9 Honor, Daniel Garfield appearing on
10 behalf of Cherokee North Kansas City,
11 LLC. Your Honor, the parties have, I
12 believe, submitted to the Court a joint
13 binder with exhibits and joint exhibit
14 binder listing the various court papers
15 and exhibits that are relevant to the
16 motion.

17 THE COURT: Okay.

18 MR. BUTLER: And, Your Honor,
19 there's an agreement that Exhibits 1
20 through 27 would be admitted into
21 evidence.

22 THE COURT: Okay.

23 (Exhibits 1 through 27 hereby
24 received into evidence)

25 MR. GARFIELD: That's correct, Your

1 DELPHI CORPORATION 50
2 Honor. Your Honor, Cherokee's arguments
3 are set forth in total in papers we
4 submitted to the Court. I go ahead and

5 waive opening statement unless the Court
6 would like to hear anything. I know
7 there are other matters that need to be
8 heard.

9 THE COURT: Well, I guess -- I read
10 the reply and from the reply I guess I've
11 been brought up to some extent on the
12 facts. As I understand it from the
13 reply, there's been a new bank loan
14 entered into by Cherokee. Correct?

15 MR. GARFIELD: That's right, Your
16 Honor.

17 THE COURT: And is there any
18 dispute between Cherokee and the debtors
19 as to the terms of that loan?

20 MR. GARFIELD: The terms of the
21 loan, no.

22 THE COURT: Okay. So, am I right
23 that the only remaining issue, as to
24 prejudice, is the potential cloud over
25 Cherokee's ability to sell the premises

1 DELPHI CORPORATION 51
2 of the -- raised by the uncertainty as to

3 whether the debtor will assume or reject
4 the lease?

5 MR. GARFIELD: I would not say that
6 that's the only issue. I think the new
7 loan clarifies things to a certain
8 extent. Although, as mentioned in the
9 reply, Cherokee did incur costs that it
10 would not have otherwise have incurred.

11 THE COURT: But those are paid,
12 right? I mean, that's done?

13 MR. GARFIELD: That's correct.

14 THE COURT: Okay.

15 MR. GARFIELD: Well, some of those
16 costs will be incurred in the next two
17 years or so as that --

18 THE COURT: Well, is there a
19 provision that says the bank gives back
20 the security deposit or anything like
21 that?

22 MR. GARFIELD: The bank would give
23 back the security deposit upon payment of
24 the loan, in full, presumably upon sale
25 of the building or if Delphi goes ahead

1 DELPHI CORPORATION 52

2 and assumes the lease.

3 THE COURT: Okay. So they'll give
4 back the security deposit if Delphi
5 assumes the lease?

6 MR. GARFIELD: That's correct.

7 THE COURT: All right. Is there
8 any other benefit, under the bank loan,
9 that would happen if Delphi assumes the
10 lease?

11 MR. GARFIELD: Any other benefit?
12 Under the loan itself, no.

13 THE COURT: Okay. All right. And
14 -- okay, that's fine.

15 MR. GARFIELD: We've made available
16 -- I tender -- we have available in the
17 courtroom today Kenneth Ho and Whitney
18 Kerr, who we submitted their declarations
19 to the Court in the binder, make them
20 available for cross examination unless
21 Mr. Springer, I believe, who has --

22 THE COURT: Those were the
23 declarations submitted in connection with
24 the motion papers themselves?

25 MR. GARFIELD: Yes, Your Honor.

1 DELPHI CORPORATION 53

2 THE COURT: Okay. And I've read
3 those.

4 MR. GARFIELD: Okay.

5 THE COURT: Does anyone want to
6 cross-examine either Mr. Ho or Mr. Kerr
7 on that?

8 MR. SPRINGER: Yes, Your Honor,
9 very briefly. David Springer for the
10 debtors.

11 THE COURT: Okay. So who do you
12 want to cross-examine first, Mr. Ho or
13 Mr. Kerr?

14 MR. SPRINGER: Mr. Ho, Your Honor.

15 THE COURT: Okay. Would you have a
16 seat up here, sir.

17 (The Witness Is Sworn)

18 THE COURT: Just for the record
19 could you spell your name?

20 THE WITNESS: Kenneth Ho. K-E-N-N-
21 E-T-H, last name H-O.

22 THE COURT: Okay, thanks.

23 MR. SPRINGER: Yes. Your Honor, if
24 the Court pleases, we'll hand up to Mr.
25 Ho a copy of the exhibit binder.

1 DELPHI CORPORATION 54

2 THE COURT: Okay.

3 CROSS EXAMINATION BY

4 MR. SPRINGER:

5 Q. Now Mr. Ho, as I understand it,
6 you're the asset manager for the owner of the
7 facility in North Kansas City. Is that right?

8 A. Yes.

9 Q. And in March of 2005, the lease
10 between your company and Delphi was extended.
11 Is that correct?

12 A. Yes.

13 Q. And you and your colleagues at your
14 company decided, at that point, that you
15 wanted to sell the building?

16 A. Yes.

17 Q. And then you hired -- or you worked
18 with Mr. Kerr, who's also here in the
19 courtroom today and he's a real estate broker
20 with respect to the sale. Is that correct?

21 A. He's the broker with respect to the
22 leasing of the property and the sale of the
23 property.

24 Q. And you retained him and his
25 company to help sell the property sometime in

1 DELPHI CORPORATION 55
2 the summer of 2005?

3 A. Actually, we had retained them
4 previous to that for leasing and potential
5 sale. And, I believe, as I mentioned in my
6 deposition that as a find of our type, we have
7 considered selling the property.

8 Q. In the late summer of 2005 did you
9 ask Mr. Kerr and his company to put together
10 an offering memorandum with regard to the sale
11 of the property?

12 A. Yes.

13 Q. And you figured -- or that memo of
14 understanding -- or the offering memo, rather,
15 was completed sometime around the end of
16 September, early October 2005? Is that right?

17 A. That's correct.

18 Q. But the offering memo was actually
19 not sent out to prospective purchasers,
20 correct?

21 A. That's correct.

22 Q. And then you figured that it would
23 take several months, probably, after the
24 offering memo went out to actually sell the
25 property?

1 DELPHI CORPORATION 56

2 A. We speculated that it would take
3 approximately two and a half to three months,
4 yes.

5 Q. And your financing that you then
6 had in place was due to expire on December
7 31st, 2005. Is that correct?

8 A. Yes.

9 Q. And then you learned about Delphi's
10 bankruptcy filing shortly after it happened by
11 reading about it on the internet?

12 A. The official filing, yes, on
13 October 9th or thereabouts. We read the
14 articles on the internet about the impending
15 or the chances of that.

16 Q. And then you also learned about the
17 motion that the debtors had filed to extend
18 the times within which they would have to
19 assume or reject the lease. Correct?

20 A. Yes.

21 Q. And you learned about that sometime
22 in early November of 2005?

23 A. That's correct.

24 Q. You reviewed the motion and you
25 understood that you had an opportunity to

1 DELPHI CORPORATION

57

2 respond and object to the motion if you wanted
3 to, right?

4 A. Yes.

5 Q. And you decided, under your advice
6 of counsel, not to object to the motion at the
7 time. Isn't that true?

8 A. Yes.

9 Q. After the bankruptcy was filed, but
10 sometime before November 29th, 2005, you
11 decided not to sell the property. Is that
12 correct, sir?

13 A. Yes.

14 Q. And you went ahead then and
15 refinanced the loan. Correct?

16 A. We refinanced the loans by January
17 30th.

18 Q. And the interest rate on the loan
19 is the same as it was -- on the new loan is
20 the same as it was on the old loan, right?

21 A. Yes.

22 Q. There was also some closing costs,
23 right?

24 A. Yep.

25 Q. And you would have incurred those

1 DELPHI CORPORATION 58

2 closing costs whenever you had to refinance,
3 right?

4 A. If we had to refinance the loan, we
5 would have most likely incurred those closing
6 costs, yes.

7 Q. Now with regard to the valuation of
8 the property, do you have that subject matter
9 in mind, sir?

10 A. Yes.

11 Q. Is it true that you never did any
12 analysis taking into account the valuation of
13 the property if the debtors rejected the
14 lease? Isn't that true?

15 A. Yes.

16 Q. And it's also true that you never
17 did a valuation of the property taking into
18 account whether the debtors assume the lease.
19 Isn't that also true?

20 A. Well, no, that's not completely
21 true.

22 Q. Well, is it true that you did not
23 do a comprehensive analysis taking into
24 account the debtor's assumption of the lease?
25 Is that true?

1 DELPHI CORPORATION 59

2 A. I guess it depends on what you
3 would say is a comprehensive analysis. We did
4 consider how that would be interpreted by the
5 market. But did not specifically know what
6 that valuation would be to a specific number,
7 no.

8 Q. Were you asked these questions and
9 did you give these answers at your deposition
10 at page 67, line 19? "Did you do an analysis
11 related to or taking into account whether, if
12 the debtors rejected the lease?" Answer:
13 "No." Question: "Did you do analysis taking
14 into account if the debtors assumed the
15 lease?" Answer: "We -- no. We did not do a
16 comprehensive analysis based on that, no. We
17 did -- we did think about what the income
18 would be, you know, based on that and for that
19 time period. The difficulty is what
20 conditions would be around in terms of what
21 that acceptance would be, so we didn't. We
22 never had a full answer as to what that would
23 be from, from Delphi's side. So it's
24 impossible to underwrite it." Was that your
25 testimony under oath at your deposition?

1 DELPHI CORPORATION 60
2 A. Yes.
3 MR. SPRINGER: No further
4 questions, Your Honor.
5 THE COURT: Okay. Any redirect?

6 REDIRECT EXAMINATION BY

7 MR. GARFIELD:

8 Q. Mr. Ho, why did Cherokee not do a
9 -- what Mr. Springer called a comprehensive
10 valuation of the property if the Delphi lease
11 were rejected?

12 A. I think that we were planning on
13 doing that once we had indication as to
14 whether or not they were going to accept or
15 reject the lease and because there we would
16 have had to incur a considerable amount of
17 cost in order to perform that kind of
18 analysis.

19 Q. Well, did Cherokee have any sort of
20 understanding as to what rejection of the
21 Delphi lease would have upon the valuation of
22 the property?

23 A. Yes. It would significantly
24 decrease the value of the property such that
25 we would incur losses that would not be

1 DELPHI CORPORATION

61

2 acceptable to our investors.

3 Q. How significant of a drop in
4 valuation?

5 A. Most likely 30 to 40 percent.

6 Q. No further questions, Your Honor.

7 THE COURT: Okay. All right. You
8 can step down, sir. We might as well
9 leave it there. They may want it
10 available for the next witness. Do you
11 want to cross-examine Mr. Kerr?

12 MR. SPRINGER: Yes please, Your
13 Honor, very briefly.

14 THE COURT: Okay.

15 (The Witness Is Sworn)

16 THE COURT: And again, would you
17 please spell your name for the record?

18 THE WITNESS: W-H-I-T-N-E-Y,
19 K-E-R-R.

20 CROSS EXAMINATION BY

21 MR. SPRINGER:

22 Q. Mr. Kerr, is it true that in the
23 summer of 2005 you were retained by the owner
24 of the facility in North Kansas City to help
25 out with trying to find a prospective buyer?

1 DELPHI CORPORATION

62

2 A. Yes.

3 Q. And in that connection, turn to

4 Exhibit No. 11. Exhibit No. 11 is a

5 spreadsheet that your company prepared to help

6 in connection with figuring out what a

7 prospective buyer might be expected to achieve

8 on the resale of the property, right?

9 A. Yes.

10 Q. And turn to page 4 of Exhibit 11.

11 Do you have that in front of you, sir?

12 A. I don't see the page numbers marked

13 on here.

14 Q. It should be copied on --

15 A. Oh, here, I see it.

16 Q. Okay. And the line that says gross

17 proceeds from sale. That's your estimates of

18 what would be obtained from the sale of the

19 property at those various times. Is that

20 true?

21 A. Yes.

22 MR. SPRINGER: I have nothing

23 further, Your Honor.

24 THE COURT: Okay. Any redirect?

25 MR. GARFIELD: I have no questions,

1 DELPHI CORPORATION

63

2 Your Honor.

3 THE COURT: All right. You can
4 step down, Mr. Kerr.

5 MR. BUTLER: Your Honor. Do you
6 have anything else in your -- any other
7 evidence?

8 MR. GARFIELD: I don't know if -- I
9 was planning on cross-examining Mr.
10 Sheehan. But I --

11 THE COURT: No. But I mean on your
12 case.

13 MR. GARFIELD: Oh no. That's all
14 the evidence we have, Your Honor.

15 MR. BUTLER: Your Honor, we would
16 present John D. Sheehan, the company's
17 chief restructuring officer for cross
18 examination in connection with his
19 declaration in support of the debtor's
20 objection that's filed at docket number
21 3131.

22 THE COURT: Okay. All right. And
23 you want to cross-examine Mr. Sheehan,

24 right?

25 MR. GARFIELD: Yes, please, Your

1 DELPHI CORPORATION 64

2 Honor.

3 THE COURT: Okay.

4 (The Witness Is Sworn)

5 THE COURT: And for the record,

6 would you spell your last name?

7 THE WITNESS: Sheehan.

8 S-H-E-E-H-A-N.

9 CROSS EXAMINATION BY

10 MR. GARFIELD:

11 Q. Mr. Sheehan, the transformation
12 plan that the debtors announced last week, the
13 debtors announced that they plan to retain
14 eight core businesses. Isn't that correct?

15 A. We disclosed that we intended to
16 retain eight manufacturing facilities in the
17 United States, yes.

18 Q. And there's -- the debtors also
19 intend to retain certain core -- what they're
20 calling core businesses, right?

21 A. Business lines, yes.

22 Q. And the manufacturer of what you
23 call cockpits is not one of those core
24 businesses?

25 A. That is correct.

1 DELPHI CORPORATION 65

2 Q. Now, it's the debtor's intention to
3 sell their cockpit business. Isn't that
4 right?

5 A. It is our intention to dispose of
6 our cockpit business line, yes.

7 Q. But the first -- the debtors are
8 first going to attempt to sell it rather than
9 wind it down or liquidate it?

10 A. Yes, sir.

11 Q. Okay. And the debtors expect that
12 they will, in fact, sell those businesses?

13 A. It would be our fervent hope, yes.

14 Q. And there are a number of matters
15 that the debtors need to go through or resolve
16 before they can go ahead and sell those
17 businesses, such as negotiations with General
18 Motors?

19 A. There are a number of matters that
20 are yet to be decided in our transformation
21 plan and we are working through those matters.
22 We have indicated -- the announcement from
23 Friday was what our transformation plan was
24 and we hope to resolve all of those matters as
25 expeditiously as possible.

1 DELPHI CORPORATION 66

2 Q. Well, a significant part of the
3 debtor's cockpit business is with General
4 Motors, correct?

5 A. That is correct.

6 Q. So you'll need to negotiate with GM
7 with respect to the cockpit business.
8 Whatever those negotiations are, you'll need
9 to have some negotiations with General Motors
10 in order to sell that business?

11 A. Certainly a prospective buyer of
12 the cockpit business is going to want to
13 understand what their ongoing business
14 relationship in the future would be with
15 General Motors, yes.

16 Q. All right, now the debtors have not
17 started any sale process of any kind with
18 respect to the cockpit business?

19 A. That is correct. We are readying
20 for sale at the current time.

21 Q. I'm sorry. You're readying it for
22 sale?

23 A. We are beginning the process, as we
24 announced on Friday, we would be disposing of
25 that business line and we are preparing to

1 DELPHI CORPORATION 67
2 start that process, yes.

3 Q. And that process would take at
4 least six to nine months?

5 A. At least.

6 Q. All right. Now, it's Delphi's hope
7 that they would be able to sell the cockpit
8 business before the plan of reorganization is
9 confirmed, if in fact that happens. Would
10 that be fair to say?

11 A. That would be our hope. I think we
12 hope to dispose of the business and receive
13 proceeds to maximize the value of the estate

14 as quickly as we can.

15 Q. The transformation plan that the
16 debtors announced says that the debtors are
17 willing to go as far as January of 2008 to try
18 and dispose of the various businesses that
19 they're disposing, correct?

20 A. I think it says the end of 2007,
21 January 2008, yeah.

22 Q. And the cockpit business would be
23 included in those businesses?

24 A. That's correct.

25 Q. The cockpit business, at the

1 DELPHI CORPORATION 68
2 moment, is generating a net operating loss for
3 Delphi. Is that correct?

4 A. The business line as a whole?

5 Q. Yes.

6 A. Yes, it is.

7 Q. But it is generating cash flow?

8 A. I'm not sure I know that
9 specifically.

10 Q. But -- well, it is a valuable asset

11 of the debtor's various bankruptcy estates?

12 A. It is an asset of the estate and
13 it's one that we view as saleable as to its
14 value that will be determined in the future.

15 Q. Well, the business generates
16 hundreds of millions of dollars in revenues.

17 A. And hundreds of million dollars of
18 costs.

19 Q. It does generate hundreds of
20 millions of dollars in revenues, correct?

21 A. Yes, sir.

22 Q. The North Kansas City plant that's
23 at issue in this motion, the cockpits that are
24 produced there are shipped to a nearby General
25 Motors plant, isn't that correct?

1 DELPHI CORPORATION 69

2 A. That's my understanding.

3 MR. GARFIELD: I have no further
4 questions, Your Honor.

5 THE COURT: Okay.

6 MR. SPRINGER: No redirect, Your
7 Honor.

8 THE COURT: All right. You can

9 step down, sir.

10 MR. BUTLER: Your Honor, the
11 debtors will rest on the declaration and
12 the evidence. The other 27 exhibits have
13 been admitted, the papers.

14 THE COURT: All right. Well, is
15 there -- I want to make sure that the
16 exhibits that you've given to me, are
17 those -- those were attachments to the
18 various motion papers? Is there
19 something that you want to point out to
20 me that wasn't attached to the motion
21 papers just so I --

22 MR. BUTLER: Your Honor, I believe
23 that there have been the construction --
24 I'm not sure that all the loan agreements
25 and so forth were included here. Mr.

1 DELPHI CORPORATION

70

2 Springer, do you want to --

3 MR. SPRINGER: Yeah, there are a
4 couple other matters, Your Honor, that
5 are not attached to the papers.

6 THE COURT: Just tell me what
7 numbers they are.

8 MR. SPRINGER: 12 and 13.

9 MR. GARFIELD: and 14, 15, 10.

10 THE COURT: Okay.

11 MR. GARFIELD: and everything else
12 -- under court documents, these have all
13 either been filed with respect to the
14 motions in this matter or have been filed
15 with the Court otherwise.

16 THE COURT: Okay.

17 MR. SPRINGER: So 10, 11, 12, 14
18 and 15.

19 THE COURT: Okay. And 13.

20 MR. SPRINGER: 13, excuse me.

21 THE COURT: Okay. So, do you have
22 any closing argument? Or do just want to
23 rest on the papers?

24 MR. GARFIELD: Well, I just want to
25 just point out, emphasize that the

1 DELPHI CORPORATION 71
2 passage of some time in this case since
3 the motion was originally filed, has made

4 it apparent what the debtors's intent is
5 with respect to its cockpit business,
6 including the business that it operates
7 at the North Kansas City plant and that
8 is that it's going to have to assume the
9 lease in one way or another.

10 If the debtors are unable to sell
11 it prior to planned confirmation, they're
12 going to still assume it because it's a
13 valuable asset of the estate that they're
14 going to want to sell post-confirmation.
15 And if it's assumed -- rather, if it's
16 sold pre-confirmation, there's no real
17 way for it to -- it's not going to reject
18 the lease right off the bat because the
19 cockpit business is something that's not
20 easily transferable to some other
21 location. The cockpits are produced for
22 a nearby General Motors plant. A buyer
23 is not going to just want to shut that
24 thing down on the first day that it buys
25 the plant.

1 DELPHI CORPORATION

72

2 THE COURT: Isn't it quite
3 possible, though, that a buyer who would
4 take an assignment of the lease would
5 potentially want changes to it and
6 perhaps Delphi would also want to have
7 changes to it if it was going to assume
8 it before a sale was done? Just to give
9 more flexibility? I mean, I took away
10 from Mr. Ho's testimony that one of the
11 reasons they didn't do an evaluation is
12 because they didn't know what terms would
13 be placed upon the assumption.

14 Why should they be forced to do
15 those types of calculations now as
16 opposed to when there actually is a
17 buyer?

18 MR. GARFIELD: Well, I guess there
19 is some likelihood that the lease would
20 be changed, but at the moment, one, we
21 don't know if that's going to happen and
22 number two, they're still going to have
23 to assume and assign the lease even
24 though they might want to have certain
25 changes. They can't just go ahead and

1 DELPHI CORPORATION

73

2 unilaterally do that.

3 THE COURT: Well, no. But what I'm
4 saying is they may decide, depending on
5 what a buyer wants to pay, that it's not
6 worth doing it if it involves assuming a
7 lease that runs to -- you know, a long
8 term lease, unless it's substantially
9 modified, so they put it to your client,
10 well, we'll assume it, but with these
11 changes. And they might be material.

12 MR. GARFIELD: Well, I think ---

13 THE COURT: Or otherwise, we'll
14 reject it.

15 MR. GARFIELD: I think given the
16 size of the cockpit business and the fact
17 that they want to sell the business as a
18 whole, a lease amount of one and a half
19 to two million dollars for an operation
20 that goes into hundreds of millions of
21 dollars, I don't think that's going to be
22 material to a buyer of the debtors. It
23 will be material to Cherokee.

24 THE COURT: Well, it's not hundreds
25 of millions of dollar of profit, right?

1 DELPHI CORPORATION 74

2 So two million dollars might be a good
3 price for this -- I'm not saying that,
4 but you know, a net gain in addition to
5 assuming liabilities may not be that
6 high, at least on the record today.

7 MR. GARFIELD: I understand that.
8 But I think, given the size of the
9 debtor's estate versus the size of
10 Cherokee's business, I think that any
11 effect on the debtor's estate -- it's
12 essentially a rounding error on the
13 debtor's financial statements.

14 THE COURT: Okay. Let me just ask
15 you one more question which is, the reply
16 says in paragraphs 3 and 4, and, I think,
17 you're saying today that it's obvious
18 that the debtor's going to assume this
19 lease. If that's the case, why can't you
20 sell the building now?

21 MR. GARFIELD: Because the market

22 is not going to be able to recognize that
23 one way or the other at this point.

24 THE COURT: Well, if it's obvious
25 --

1 DELPHI CORPORATION 75

2 MR. GARFIELD: Well, because I
3 think, as a general matter, any buyer
4 who's going to see that on the market is
5 going to see a company that's in
6 bankruptcy and that makes it difficult to
7 sell.

8 THE COURT: Okay.

9 MR. GARFIELD: I don't think I have
10 anything further to add at this point,
11 Your Honor. Thank you.

12 THE COURT: All right.

13 MR. BUTLER: Your Honor, the
14 debtors just have a couple of points of
15 emphasis. First, as I think is apparent
16 on this record, the debtors are, in fact,
17 making progress towards a transformation
18 and a plan of reorganization. They've

19 been moving forward in good faith and the
20 landlord acknowledges that the debtors
21 have made statements as recently as last
22 Friday about what are core and non-core
23 assets.

24 Having said that, the record's
25 clear and the examination of Mr. Sheehan

1 DELPHI CORPORATION 76
2 makes clear that the debtors have -- and
3 the exhibits that are now in evidence
4 make clear, that the projected window for
5 the disposition of non-core businesses in
6 a way that maximizes value for the estate
7 may take up through the beginning of
8 2008, through this year and the balance
9 of next.

10 Having said that, the debtors have
11 also said in that release, which is a
12 matter in evidence now, that the debtors
13 hope to emerge from Chapter 11 by the end
14 of the second quarter of next year. That
15 happens to be the same period of time
16 that the 365(d)(4) deadline currently

17 exists, which is June of next year.

18 And the question, I think, before
19 the Court is whether under the Second
20 Circuit precedent that has Cherokee
21 carried their burden to establish cause
22 of something new, since they declined to
23 object to the original 365(d)(4)
24 deadline, which is applicable to them.

25 The order that it was entered there

1 DELPHI CORPORATION

77

2 allowed them to come back to court if
3 they could establish cause.

4 And the only two things that have
5 happened on this record since then, or
6 three things, are they have conceded they
7 have not marketed the property for sale,
8 number one. Number two, they have gotten
9 new financing in place. The record is
10 clear that the reserve account that
11 they're funding, they're being paid
12 interest on and it's a negotiated term
13 they negotiated in connection with that

14 financing. And they're being compensated
15 for the reserve. And the balance of
16 their argument goes to valuation issues
17 and their own broker's testimony and the
18 evidence that's before the records. His
19 testimony says that the value they would
20 get towards the middle of next year would
21 fully compensate them and that they're
22 not prejudiced at all if they sold at
23 that period of time.

24 So, I don't understand, Your Honor,
25 how there's any demonstration of cause

1 DELPHI CORPORATION 78
2 here as to why this ought to be
3 shortened. It will be, I think, a
4 challenge for the debtors along with this
5 and the other 90 leases that the debtors
6 have. Because these are not just small
7 stores, these are large plants, for the
8 most part, that the debtors will have a
9 challenge on sorting out the assumption
10 rejection formula for these -- as they're
11 marketing these businesses over the next

12 18 months.

13 And we basically said we're going
14 to try to get it all done by next June,
15 no later than next June in terms of this
16 reorganization, even though the actual
17 marketing may continue beyond emergence
18 for some of the business lines.

19 THE COURT: Okay. All right.

20 MR. ROSENBERG: Your Honor, very
21 briefly. The debtor just announced this
22 transformation plan and Mr. Sheehan just
23 testified that the process of marketing
24 is just beginning, just starting, hardly
25 begun at all. Your Honor in his

1 DELPHI CORPORATION 79

2 questions, focused on a successful sale
3 and the need, perhaps, to amend the lease
4 as a negotiation with the landlord for an
5 assumption in the context of a particular
6 deal.

7 But my job, Your Honor, is to look
8 at the down side at worst case. And

9 while we certainly hope and expect that
10 any marketing program will be successful
11 and will result in the generation of
12 benefits for the estate, sitting here now
13 with a process that hasn't even begun,
14 there is no way, whatsoever, of knowing
15 that that will be the case. No way,
16 whatsoever, of knowing that at the end of
17 the day, the process that may be better
18 for the estate is in fact a rejection of
19 this lease.

20 And therefore, Your Honor, to
21 cause the debtor to make a decision
22 today, simply is not in the best interest
23 of the estate. And as Mr. Butler just
24 summarized, we heard nothing from the
25 landlord to suggest that the balance of

1 DELPHI CORPORATION 80
2 hurt lies otherwise.

3 THE COURT: Okay. All right. I
4 have in front of me a motion by one of
5 Delphi Automotive Systems, LLC's
6 landlords, Cherokee North Kansas City,

7 LLC, to shorten the time under Section
8 365 of the Bankruptcy Code for the debtor
9 to determine whether to assume or reject
10 its lease.

11 As the Second Circuit laid out in
12 In re Burger Boys, Inc., 94 F.3d 755,
13 761 (2d Cir. 1996), in
14 connection with requests to determine
15 "cause" under Section 365, although there,
16 as an aside, the Court was determining
17 cause for an extension as opposed to
18 cause for termination of the time to
19 assume or reject,
20 the Second Circuit set forth
21 various factors that the bankruptcy court
22 should consider when determining whether
23 cause exists or not, although cautioning
24 that those factors should not be applied
25 in a mechanical or formulaic manner.

1 DELPHI CORPORATION 81
2 Cherokee has the burden here to show cause
3 to require a shortening of the time to assume or

4 reject the lease because that is what my order,
5 previously extending the assume or reject period,
6 Provided. That order was dated November 29, 2005.

7 Now, I don't agree with the debtor
8 that Cherokee is estopped from seeking to
9 shorten the assume or reject period
10 provided in that order, because the order
11 did recognize the right of a landlord to
12 come in and seek a shorter period for
13 cause. But obviously, under the order,
14 Cherokee does have the burden.

15 In going through the factors made
16 out by Burger Boys and subsequent cases,
17 I conclude that it has not carried that
18 burden. The first factor is whether the
19 debtor is paying for its use of the
20 property. And it is undisputed that the
21 debtor is paying for use here.

22 I should note that Burger Boys
23 reversed the lower courts for directing
24 the end of the assume-or-reject period
25 simply because the debtor was not paying

2 and said, that even if the debtor was not
3 paying, there might be other reasons to
4 continue the assume-or-reject period.

5 But here, of course, the debtor is
6 paying and that's a strong factor for
7 continuing the debtor's ability to decide
8 whether to assume or reject to a later
9 date.

10 Secondly, I need to inquire whether
11 the debtor's continued occupation of the
12 premises damages the landlord beyond
13 compensation available under the
14 Bankruptcy Code. As far as this record
15 provides, I believe that to the extent
16 there is any damage whatsoever that would
17 not be compensable under Section 502 of
18 the Bankruptcy Code or alternatively, if
19 for some reason the debtor stop paying
20 under section 507, it is negligible.

21 The debtor has pointed out that the
22 landlord did, in fact, successfully
23 refinance its loan, which it knew it
24 would have to do in the fall of 2005,
25 since the loan expired at the end of that

1 DELPHI CORPORATION 83

2 year and that the finance charge was a
3 charge that would have been incurred in
4 any event and that the interest rate did
5 not change.

6 The only added burden on the
7 landlord, in connection with that
8 refinancing, was the requirement to put
9 up an additional amount of cash that
10 eventually will aggregate 200 thousand
11 dollars, which is being held at interest
12 as security for breach of the lease.
13 Because it's being held as interest, the
14 only real damage there, is the
15 difference between that interest rate and
16 the amount that Cherokee could earn over
17 and above that interest rate, separately.

18 Cherokee says it's also damaged
19 because it's not able to sell the
20 property, given the debtor's bankruptcy
21 case and the uncertainty over the lease.
22 I believe, however, this factor was not
23 contemplated when the Second Circuit laid
24 out the consideration of whether the

25 lessor would be damaged beyond the

1 DELPHI CORPORATION 84
2 compensation available under the Bankruptcy Code.

3 The relationship between Cherokee
4 and the debtor is a landlord tenant
5 relationship. In that relationship, the
6 debtor is not obligated to enhance the
7 landlord's ability to sell the property
8 and it's clearly recognized that merely
9 the fact of a debtor being a debtor under
10 the Bankruptcy Code is not a reason to
11 terminate a lease or to compel assumption
12 or rejection of it simply because that fact
13 would somehow make it harder for a landlord to
14 sell its property. If that were the case, debtors'
15 time to assume or reject the lease would almost as a
16 matter of course be terminated.

17 Moreover, as the landlord points out, given
18 Delphi's current statement that it intends to sell
19 its cockpit manufacturing line, and consequently
20 that the likelihood that eventually the line will
21 be sold and consequently the facility in

22 Kansas City will go along with that sale,
23 Cherokee's ability to sell the premises
24 premises should significantly improve,
25 provides better clarification for

1 DELPHI CORPORATION 85

2 prospective buyers.

3 In addition, Exhibit 10 suggests
4 that, ultimately, such a sale is
5 achievable for a price to the landlord that is not
6 materially worse than what it could be
7 sold at today, after you back out the
8 amount of rent that the debtor will be
9 paying until its decision to assume or
10 reject.

11 The lease is not the debtor's
12 primary asset, but it's a significant
13 facility and it is a piece in the very
14 complicated puzzle that the debtor is
15 still putting together, with the help of
16 its various constituencies including the
17 creditors' committee, and I believe that
18 it has not had sufficient time to
19 formulate a plan, given the complexity of

20 that puzzle.

21 So, in evaluating those last two
22 factors laid out by Burger Boys, it again
23 appears to me that those factors also
24 argue for not shortening the time to
25 assume or reject.

1 DELPHI CORPORATION 86

2 I should note, finally, that the
3 Second Circuit cautioned in the Klein
4 Sleep, 78 F.3d 18, 29 (2d Cir. 1996), that
5 assumption of a lease should be avoided,
6 if possible, given the fact that if the lease
7 is subsequently breached because a debtor
8 changes its business plan or its
9 forecasted revenues, upon which the
10 business plan was based proved to be less
11 than the forecast, the claim is an
12 administrative claim, a hundred cent
13 dollar claim as opposed to a lease
14 rejection claim. Consequently, given the
15 uncertainty as to the ultimate sale and
16 the terms of the ultimate sale, including

17 the terms by which the lease might be
18 assumed, all of which will not become
19 completely clear, it appears on this
20 record, until the last quarter of 2007,
21 at my best estimate, it would appear to
22 me to be premature to force the debtor to
23 get into a negotiation regarding
24 assumption or rejection with the landlord
25 at this time.

1 DELPHI CORPORATION 87

2 The prospect of a sale, I'd agree,
3 is quite strong. But that should be
4 additional protection for the landlord,
5 since that should lead, ultimately, to
6 assumption of the lease and, if not full
7 payment, because the lease may be
8 renegotiated to some extent, at least a
9 much better result than rejection.

10 But given the uncertainties here
11 and the fact that the debtor's paying
12 currently, the debtor should not be
13 forced to get into those negotiation and
14 decision making process at this time.

15 So, Mr. Butler, you can submit an
16 order denying the motion for the reasons
17 stated.

18 MR. BUTLER: Thank you, Your Honor.
19 Your Honor, the next matter on the agenda
20 is matter number 10. It's the O'Neil
21 lift stay motion. And this was filed by
22 Mary O'Neil and Liam O'Neil at docket
23 number 2748. We filed a response at
24 docket number 3051. I understand there
25 was a reply filed last evening and this

1 DELPHI CORPORATION 88
2 is the movant's burden and I will cede
3 the podium to them.

4 MR. GARFIELD: Your Honor, if I may
5 be excused, I have to --

6 THE COURT: Yes, that's fine. I
7 guess my first question is, are you
8 proceeding with this or did you want
9 discovery? As I read the response, you
10 said you wanted some discovery on the
11 insurance policies?

12 MR. MENAKER: Yes, good morning

13 Your Honor. Richard Menaker,

14 representing the O'Neils.

15 THE COURT: Okay.

16 MR. MENAKER: The answer on that

17 is, we don't see in the debtor's papers,

18 they haven't submitted a declaration or

19 any supporting material, but they do

20 refer to docket 1559 which refers to

21 insurer's arrangements that the Court is

22 undoubtedly more aware of than we were.

23 We have studied those documents; don't

24 understand how they support their

25 position.

1 DELPHI CORPORATION

89

2 But if, in fact, there is an issue

3 as to whether a recovery here somehow

4 truly comes out of the pocket of the

5 debtors and if that is the contention,

6 then I think we aren't able really to

7 respond to that unless we have answers to

8 some very narrow discovery that we've

9 submitted. And we're happy to put this

10 over, pending an opportunity to look at
11 the documentation.

12 THE COURT: Okay. I mean, the
13 other question I was going to ask you is
14 -- and if you haven't thought about this,
15 you don't have to give me an immediate
16 answer, is are the O'Neils prepared to
17 condition relief from the stay here upon
18 there being no liability to the debtors?
19 But that either directly, which I
20 understand they're doing right now,
21 they're waiving their recovery from the
22 debtors, but then also indirectly so that
23 if the debtors are right and the claim
24 just circles back to them, they would
25 waive that type of -- then they would

1 DELPHI CORPORATION 90
2 waive or at least reconsider their basis
3 for seeking relief from the stay.

4 It seems to me that -- I'm not
5 asking you that -- it's unfair for me to
6 ask you to answer that right now. But if

7 you're going to adjourn it anyway, maybe
8 that's something to consider during the
9 few weeks when you're looking at the
10 insurance policy.

11 MR. MENAKER: Yes. The short
12 answer is exactly as Your Honor stated.
13 I don't have a basis to know and we
14 haven't directed the question to the
15 petitioners. A slightly longer answer
16 is, if the documentation that were to be
17 produced and the answers to the
18 interrogatories were to reinforce what we
19 think we see in the materials already on
20 file in docket 1559, I think they would
21 probably say yes because we don't see the
22 circle.

23 THE COURT: Okay. All right.

24 MR. BUTLER: Your Honor, one just
25 aspect of this in terms of the time for

1 DELPHI CORPORATION 91
2 scheduling, Counsel, is just one of the
3 other things we were going to raise in
4 the record today. And, Your Honor, we've

5 seen some of these lift stay matters come
6 into the Court. We've been able to get a
7 lot of them taken off calendar because
8 we've been talking about putting in some
9 kind -- at least for the tort lift stays
10 --

11 THE COURT: Right.

12 MR. BUTLER: -- some type of
13 procedures which we are trying to work
14 out with the creditors' committee this
15 summer as we approach the bar date, the
16 June 5 member's bar date. And our
17 intention was to come to the Court this
18 summer with some type of a protocol to
19 address this. Obviously, Your Honor's
20 not going to liquidate tort claims. And
21 at some point we need to, sort of, as
22 moving to the next phase of the case
23 claim's administration. We need to sort
24 of understand how we're going to do that.
25 And one of the things we were going to

2 ask you to do, had this gone forward
3 today, would be, at a minimum, to adjourn
4 this matter until the summer docket when
5 we're going to deal with this issue
6 generally, because -- but I just say that
7 for benefit of counsel because I don't
8 want to move this to May 12th and then
9 come back --

10 THE COURT: Well, I think the
11 O'Neils moved, so I need to -- I mean,
12 they moved for relief from the stay, so I do need to
13 determine this matter. But I think,
14 leaving aside how to liquidate claims and
15 that's something you may want to talk
16 with them about and maybe you'll have somewhat
17 of an ad hoc agreement with them, it
18 seems to me that if it's only insurance
19 that's being sought and it doesn't come
20 back to bite the debtors some other way,
21 then it's kind of an easy issue for me
22 and I'd grant stay relief.

23 The objection says that it does
24 come back to bite you, not really in the
25 sense of you having to pay attention to it,

1 DELPHI CORPORATION 93

2 but monetarily it bites you and I think
3 it's fair for you all to spend a little
4 more time going through the documents on
5 that since I don't -- they're not in
6 front of me today and I don't think
7 counsel's prepared to go through them
8 today. So I'm going to adjourn this to
9 the 12th.

10 I understand that you want to do
11 these things generally in an organized
12 fashion, but I do have an obligation
13 under 362(e) and I'll stick to that by
14 adjourning it to the 12th and treating
15 this as the preliminary hearing and
16 hoping that the parties may reach
17 agreement so they don't actually have to
18 come back here on the 12th.

19 If it comes down to just how to
20 liquidate the claim, even though you
21 haven't reached a comprehensive program
22 and this won't serve as a basis for a
23 comprehensive program, I think you can
24 probably reach some basis to deal with

25 that issue.

1 DELPHI CORPORATION 94

2 MR. BUTLER: Thank you, Your Honor.

3 MR. MENAKER: One further question,
4 Your Honor. Did the Court give any
5 consideration to the narrow requests we'd
6 made and so that we don't have a later
7 issue about this, that we tried to be
8 very limited and unburdensome in the
9 request that we're proposing. And does
10 the Court have any views on that?

11 MR. BUTLER: We'll be happy to work
12 out discovery --

13 THE COURT: Yeah, well, as far as
14 discovery's concerned?

15 MR. MENAKER: Yes.

16 THE COURT: It seemed to be
17 reasonable to me. I mean, the debtors
18 raised an issue as to how the insurance
19 coverage comes back to actually cause
20 them to in fact pay the damages here,
21 which means that they would have to pay
22 attention to the trial and they could be

23 liable at the end of the day. So as long
24 as it relates to that contention, there's
25 no problem with that.

1 DELPHI CORPORATION 95

2 MR. MENAKER: Thank you very much,
3 Your Honor.

4 THE COURT: Okay.

5 MR. BUTLER: Your Honor, the next
6 matter on the agenda is the Offshore
7 Group's lift stay motion filed at docket
8 number 2811 and there was an objection
9 filed at docket number 3025 and Mr.
10 Berger's handling this matter.

11 MR. NYE: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. NYE: For the record, I'm Kasey
14 Nye from Quarles & Brady Streich Lang,
15 appearing on behalf of Offshore. As you
16 know, Offshore has filed a lift stay
17 motion asking the Court for authority to
18 exercise a setoff trade. The debtors
19 objected and the objection -- we

20 fundamentally agree on most of the law in
21 relation to this. That is, we agree that
22 the two debts must be mutual and that
23 mutuality must be between the same
24 parties standing in the same right and
25 that both debts must be pre-petition.

1 DELPHI CORPORATION 96

2 That much we agree on.

3 The debtors attacked our motion --
4 our request for setoff in three primary
5 ways. On the one hand, they say we're
6 not -- the setoff we seek to achieve is
7 not between the same parties in the same
8 right. They assert that Maquilas Teta
9 Kawi, which is an affiliate of our
10 client, is the true owner of the debt to
11 the debtors. We believe that's a
12 contract interpretation issue and I would
13 like to walk the Court through how we
14 interpret the contract to resolve that.

15 Second, the debtors also attack
16 whether or not the obligations are both
17 pre-petition. I think we would benefit

18 from some clarification from the Court
19 about how the parties or how the Court
20 would determine that on a legal basis and
21 then the third issue that they raise,
22 primarily, are a few minor, relatively
23 speaking, factual issues regarding
24 whether or not certain individual claims
25 in both directions are pre-petition or

1 DELPHI CORPORATION 97

2 post-petition.

3 THE COURT: Okay.

4 MR. NYE: So what I would propose
5 today, Your Honor, is that we attempt to
6 resolve the contract interpretation and
7 the legal issue and then take it from
8 there.

9 THE COURT: Okay.

10 MR. NYE: Is that acceptable?

11 THE COURT: Well, we'll see. I
12 don't know what the -- the third point is
13 an accounting point and I don't know
14 whether the debtors have finished the

15 accounting or not. But I guess we'll
16 hear from them. It may not matter,
17 depending on the first two answers.

18 MR. NYE: That's correct, Your
19 Honor. And we've exchanged only initial
20 discovery with the debtors in relation to
21 that. It's my understanding that --

22 THE COURT: That their last point.

23 MR. NYE: -- still need to be
24 provided on the last point.

25 THE COURT: All right. So is the

1 DELPHI CORPORATION 98
2 debt that is asserted to be owing to the
3 debtor here the obligation to refund the
4 VAT?

5 MR. NYE: Yes, Your Honor.

6 THE COURT: Okay. So why don't you
7 walk me through why that's, according to
8 the movant, owed by Offshore?

9 MR. NYE: The first place in the
10 contract I'd like to direct the Court's
11 attention to is on page 17. It is
12 paragraph -- page 17, article 13,

13 referring to subcontract. That provision
14 provides that -- and I'll read it,
15 without in any way relieving it of any
16 obligation or duty otherwise undertaken
17 hereunder, Offshore will have the right
18 to enter into a subcontract with Maquilas
19 Teta Kawi to provide services hereunder
20 in Mexico. And as the debtors correctly
21 point out, Maquilas is not a party to
22 this contract although they are
23 significant to it.

24 Next, I would like to turn the
25 Court's attention to page 8, article 5

1 DELPHI CORPORATION 99
2 which is fees and costs. We're in
3 subsection a single, little i. And about
4 halfway through that paragraph, this
5 refers to the facilities fees. What
6 Offshore provides to the debtors is a off
7 shore manufacturing operation in Guaymas
8 and Empalme and Sonora, Mexico and as
9 part of that there is use of certain

10 facilities in Mexico that actually belong
11 to Maquilas. There's a facility fee for
12 the use of the space in Mexico in
13 relation to that.

14 The sentence starting in addition,
15 Offshore shall include in this billing an
16 amount equal to 15 percent of facilities
17 fee. This amount shall cover Offshore's
18 obligation to Maquilas Teta Kawi to
19 advance Mexico's Value Added Tax. Then
20 the next sentence reads, Offshore shall
21 credit client, client being the debtor
22 here, for the IVA paid on the Mexican
23 facility within Maquilas Teta Kawi being
24 able to utilize the IVA or otherwise
25 resolving -- receiving a refund of IVA

1 DELPHI CORPORATION 100
2 from the Mexican government. And then it
3 describes how the credit is calculated,
4 which is based on the peso dollar rate at
5 the date Maquilas receives the refund.

6 Again, I would emphasize that the
7 clear obligation under the contract is

8 between Offshore and the debtor and it's
9 an obligation to provide a credit to the
10 debtor when Maquilas has use of the
11 refund.

12 Next, I would direct the Court's
13 attention to page 13, paragraph e, and
14 that is in article 6 of the agreement.
15 This is a --

16 THE COURT: I'm sorry. Let me just
17 hold you up for a second. Okay.

18 MR. NYE: This is -- among the
19 services provided by Offshore are the --
20 at the Mexican manufacturing operation,
21 the debtors have, or any client of
22 Offshore's has no legal presence in
23 Mexico. All the liability on the taxes
24 or on employee severance and the like
25 actually belong to Maquilas. And the

1 DELPHI CORPORATION 101
2 obligations of the -- and then Maquilas
3 and Offshore, in turn, build that
4 upstream to the client and reimbursements

5 flow back and forth which it ends up
6 resulting in some fairly complex kind of
7 accounting and detailed facts that we
8 may, at a later date, need to be working
9 out. But in this paragraph -- and one of
10 the things that they do is that when a
11 client requires a purchase of goods in
12 Mexico and the client's representative in
13 Mexico seeks that purpose, Maquilas goes
14 and purchases it and then charges it.
15 The Value Added Tax is generally charged
16 on all such purchases in Mexico. As a
17 Maquiladora under a battery of Mexican
18 laws, meaning that all the manufacturing
19 is going to go back to the United States.
20 Under the shelter, Maquilas has a zero
21 percent Value Added Tax rate and
22 therefore the right to a refund.
23 Paragraph E has a parallel paragraph to
24 the one we just looked at.

25 THE COURT: I'm sorry. And what

1 DELPHI CORPORATION
2 page is this on?

102

3 MR. NYE: On page 13, Your Honor.

4 THE COURT: Okay.

5 MR. NYE: And the last sentence of

6 this paragraph. Well, this paragraph

7 deals with the billing for costs incurred

8 under contract at the direction of the

9 client. And the last sentence of that

10 paragraph states that any Value Added Tax

11 -- oh, it deals with sales, with other

12 tax issues, I'm sorry -- any Value Added

13 Tax, sales tax, or other similar taxes

14 related to fees and expenses incurred

15 under this agreement will be refunded to

16 the client within 15 days of Maquilas

17 Teta Kawi/Offshore being able to utilize

18 IVA or similar tax. Again, referring

19 back to the first paragraph we spoke

20 about on page 17, the article 13, the

21 obligation of the contractor, Offshore's,

22 and to the extent they're Maquilas's,

23 they're as a subcontractor. So I would

24 submit to the Court that under the clear

25 and unambiguous terms of this contract,

1 DELPHI CORPORATION 103

2 the contractual relationship is between
3 Offshore and the debtor -- one of the
4 debtors, Delphi Automotive, LLC and that
5 the charges that are -- that the debt
6 that Offshore has is as a result of the
7 tax credit in Mexico. However, it is an
8 obligation and a mutual obligation under
9 the contract.

10 THE COURT: Because of the refund
11 or credit provisions.

12 MR. NYE: Correct. And so that,
13 from our perspective, resolves the same
14 parties standing in the same rights and
15 interests. The next question, and to my
16 mind the more complicated question,
17 perhaps more factually than legally, Your
18 Honor, is the timing issue. Are these
19 going to be pre-petition or post-petition
20 obligations? If you have additional
21 questions in relation to the parties, I'd
22 be happy to --

23 THE COURT: No, that's okay.

24 MR. NYE: -- address those. Catch
25 up with my rehearsed stuff here. It has

1 DELPHI CORPORATION 104
2 long been the law and since this Court's
3 Judge Lifland's decision in the matter of
4 Hecht in 1984, and the cite that -- the
5 definitions of debt and claim under the
6 code apply to setoffs and that it is
7 possible to set off a claim that was
8 contingent, unmatured, unliquidated on a
9 petition date. The cite for Hecht is 701
10 Bankruptcy Reporter page -- 41 Bankruptcy
11 Reporter page 701 at page 705. Other key
12 cases on this are the Fifth Circuit Court
13 of Appeals decision in Braniff Airways at
14 814 F.2d, 1030 at page 1036. I'd be
15 happy to repeat any of these, Your Honor,
16 which held that that when the
17 transactions that gave rise to the debt
18 occurred pre-petition, the debt is --
19 remains pre-petition even if the actual
20 payment or refund obligation is triggered
21 post-petition. And I'll -- there's an
22 additional Court of Appeals case from the

23 Eighth Circuit called -- well, Gerth was
24 one of the parties and the cite is 991
25 F.2d 428.

1 DELPHI CORPORATION 105
2 THE COURT: Is that a setoff case
3 or a --
4 MR. NEY: That is a setoff case.
5 THE COURT: And what's the cite?
6 MR. NEY: 991 F.2d 1428 and the
7 reference page is at 1433. And that,
8 again, held that debt in claim or co-
9 extensive for setoff purposes and
10 therefore, a debt arises for setoff
11 purposes when all transactions necessary
12 for liability to occur, regardless of
13 whether the claim is unmatured and
14 liquidated or contingent on a petition
15 date is filed. And this squares a black-
16 letter bankruptcy law going back to post-
17 petition claims -- not rendered post-
18 petition simply because of the fact that
19 time for payment occurs post-petition.
20 There's legion authority, in that regard,

21 from this -- this very Court. There's a
22 2000 case from In re Nextway --
23 THE COURT: Well, the issue is when
24 is the VAT refund earned?
25 MR. NEY: Correct, Your Honor.

1 DELPHI CORPORATION 106
2 THE COURT: I mean, when does
3 Maquilas get the right to get the VAT
4 refund?
5 MR. NEY: And to respond to the VAT
6 question, I would again, ask the Court to
7 look at the contract. At page 12,
8 article 6, paragraph C. No -- no I'm
9 sorry. Let's start with -- and this is -
10 - the part of the contract that deals
11 with invoices and payments. Now, again,
12 this intersects with Mexican law and if
13 the Court desires additional briefing and
14 cites to the Mexican law, part of it you
15 need to --
16 THE COURT: Why didn't you raise
17 any of these issues in your motion? And

18 just asserted that this was, basically, one
19 whole entity?

20 MR. NEY: Well, they are separate
21 legal entities.

22 THE COURT: No. I know. But you
23 didn't raise any of these issues. I feel
24 a bit blind-sided by this and really am
25 inclined to have it be adjourned so that

1 DELPHI CORPORATION 107

2 the parties can brief the issue of when
3 does the VAT arise under Mexican law.

4 MR. NEY: I would be happy to do
5 that, Your Honor.

6 THE COURT: Okay.

7 MR. NEY: I apologize.

8 THE COURT: Okay. But I think
9 that's -- unless Mr. Berger wants to
10 submit anything supplemental to what
11 you've just laid out to me, that's all
12 I'm going to need. Or if there are other
13 provisions of the contract that refute
14 these provisions that were just quoted to
15 me.

16 MR. BERGER: Your Honor, we think
17 that there's some issues from the first
18 time to the Court as well. Certainly
19 Offshore has the burden to establish
20 cause here in their motion papers and
21 exhibits; simply do not establish cause.
22 There's no mutuality here. I don't know
23 that we need to get into the accounting
24 issues of discovery. I think that the
25 statements that we've heard today clearly

1 DELPHI CORPORATION 108
2 assert -- establish, rather, that this is
3 a triangulated setoff.

4 THE COURT: Well, is there
5 anything, I mean, the two provisions,
6 article 5(1) and article 6(e), both, to
7 my mind, seem to make Offshore liable and
8 give it direct liability for a refund
9 or a credit.

10 MR. BERGER: It does have a direct
11 contractual obligation to us. And what
12 they're trying to do is fund that

13 contractual obligation by pointing to
14 property of the estate in the hands of
15 others.

16 THE COURT: But don't they have to
17 -- don't they just have to -- whether
18 it's in a -- you don't have to get this
19 refund under these provisions, it's just
20 that Maquilas has to get it. Does
21 Maquilas have some independent obligation
22 to give it over to you?

23 MR. BERGER: Under 542 they would,
24 it's property that estate.

25 THE COURT: So, isn't that the

1 DELPHI CORPORATION 109

2 estate's remedy? That you did -- that
3 the credit is asserted by way of setoff
4 but then you can get the full VAT back?

5 MR. BERGER: Well, I don't think
6 that -- no, Your Honor, I don't think so.
7 I don't think -- I think that's taking it
8 in reverse order. I think that in that
9 instance Offshore is, in essence, taking
10 our property and giving the debtor the

11 burden of chasing a --

12 THE COURT: Well, that's why I'm
13 asking you. Is there some other
14 provision of this contract that sets up a
15 separate duty to get the refund back?

16 MR. BERGER: No, none that I see.

17 THE COURT: Okay.

18 MR. BERGER: And the other -- the
19 other point I would raise, Your Honor, is
20 that counsel refers to pre versus post as
21 to when the transactions are completed in
22 a transaction. You can't point to the
23 shelter agreement because Maquilas simply
24 isn't a party to it. The transaction, I
25 think, that Your Honor appropriately asks

1 DELPHI CORPORATION 110
2 questions about, is the transaction of
3 obtaining the VAT refund.

4 THE COURT: Well, I -- that's the
5 issue that I don't know we can handle
6 today. My preliminary view on the
7 mutuality point is that Offshore wins on

8 that one. You can go through the
9 contract and look more closely, since
10 these provisions weren't alluded to in
11 the original motion. But, just based on
12 these two provisions, it appears to me
13 that there is a separate debt in terms of
14 a creditor refund obligation that
15 Offshore owes the debtor. But, as far as
16 the mutuality as to pre and post, I could
17 see two possibilities. The first is
18 that, as you say, it arises when Maquilas
19 actually receives the refund, which would
20 certainly tie in to this language.
21 Alternatively, based on the authorities
22 that counsel cited, I could see it
23 arising when the right to the refund
24 accrued. That is, when the -- when the
25 Mexican government owed the refund. And

1 DELPHI CORPORATION 111
2 I don't know whether that makes a
3 difference or not.
4 MR. BERGER: Well, we'll take up
5 those issues. I would say --

6 THE COURT: I would think it would
7 be a stretch to say that it would arise
8 at the very minute that the transaction
9 that gave rise to the VAT occurred. But,
10 I guess that's the third option.

11 MR. BERGER: I'd agree with that,
12 Your Honor. I would say, though, that in
13 the motion papers they do admit that
14 these VAT refunds weren't received.

15 THE COURT: No, I know. You win if
16 that's the case. But, I think that the
17 argument that counsel was making, and
18 there may be some substance to it, I
19 don't know, is that the right to the
20 refund itself that the debtor -- that
21 Maquilas has -- arises, you know, at an
22 earlier date that happened to be before
23 the debtors filed. Then arguably it's
24 mutual.

25 MR. BERGER: That is a new issue

1 DELPHI CORPORATION 112
2 raised here.

3 THE COURT: And I think that
4 involves interpretation of Mexican law
5 and Mexican tax law, at that, which is --
6 I'm sure you'll have fun with.

7 MR. BERGER: I'm sure we will.

8 Thank you, Judge.

9 THE COURT: But I'm going to
10 adjourn it as to that issue until May
11 12th. And again, if there's something
12 else you want to alert me to as to the
13 contract and on the mutuality of the
14 debtors --and that is Offshore and
15 Automotive Systems LLC-- you can do that
16 too. I think, to do this efficiently,
17 I'll probably want submissions by May
18 3rd.

19 MR. BERGER: Very good, Judge.

20 THE COURT: Okay. Thanks.

21 MR. BERGER: Thank you. May I be
22 excused Your Honor?

23 THE COURT: Yes.

24 MR. BERGER: Thank you.

25 THE COURT: And you're certainly

1 DELPHI CORPORATION 113

2 free to resolve it, in the meantime too,
3 by doing your accounting.

4 MR. BUTLER: Your Honor, the next
5 matter on the agenda is the Automotive
6 Technologies lift stay motion at docket
7 number 2928. And we've filed our
8 objection at docket number 3114. But I'd
9 like to, for a moment, and I know that
10 movant has an opportunity to go forward
11 on this, but try to shortcut this. I
12 would like to describe to Your Honor,
13 briefly, the stay relief that we're
14 prepared to consent to.

15 THE COURT: Which is to the one --

16 MR. BUTLER: Actually, it's to both
17 --

18 THE COURT: Oh, both.

19 MR. BUTLER: -- of them on a
20 limited basis.

21 THE COURT: Okay.

22 MR. BUTLER: Just so, by way of
23 background, Your Honor, in 2001 and 2003,
24 Automotive Technologies International and
25 ATI commenced two separate actions in the

1 DELPHI CORPORATION 114
2 United States Issue Court for the Eastern
3 District of Michigan. They alleged patent
4 infringement with respect to two patents,
5 one involving side-impact sensors and one
6 involving weight sensors by Delphi, among
7 other claims. The District Court, in
8 both cases, granted summary judgment and
9 dismissed ATI's claims. And the -- and
10 both -- and there are appeals taken by
11 ATI from both the 2001 action and the
12 2003 action. Now the 2003 action, Your
13 Honor, is in the appellate courts and
14 fully briefed. And we're prepared to
15 consent that the oral argument -- to lift
16 the stay for the purposes of oral
17 argument, so that the appellate courts
18 can come to conclusion on that currently
19 brief -- fully briefed appeal. But, if
20 there's anything else that needs to be
21 done after that, the -- that Court
22 renders its decision, it would be stayed
23 and we'd have to come back to sort that

24 out.

25 THE COURT: So I'm -- let me make

1 DELPHI CORPORATION 115

2 sure I understand -- so you're prepared
3 to lift the automatic -- have the
4 automatic stay be lifted with regard to
5 the 2003 action in which the debtor's the
6 only defendant?

7 MR. BUTLER: Right.

8 THE COURT: Through a ruling on the
9 appeal?

10 MR. BUTLER: Through a ruling on
11 the appeal.

12 THE COURT: But not enforcement or
13 anything else?

14 MR. BUTLER: Not enforcement and
15 not a further appeal.

16 THE COURT: Right. Okay.

17 MR. BUTLER: It's fully briefed.

18 The only thing we're -- we think makes
19 sense is, modify the automatic stay to
20 allow oral argument to go forward and the

21 Court to rule. And then we're back in
22 the automatic stay land until -- and
23 people -- we can see where we go from
24 there.

25 THE COURT: All right.

1 DELPHI CORPORATION 116

2 MR. BUTLER: With respect to the
3 2001 appeal, it's a little counter-
4 intuitive because it's the earlier
5 action. The 2001 action, Your Honor, is
6 about to be involved in mediation if it's
7 not already being mediated. And we
8 believe it would be appropriate to
9 acknowledge that the stay can be modified
10 for that mediation to go forward, but
11 nothing further. And the reason for that
12 is with respect to the 2001 action. That
13 matter has not been briefed. There is --
14 there are multiple defendants. General
15 Motors is involved in that and they may
16 contend that Delphi owes us a contractual
17 -- owes them a contractual
18 indemnification to defend them in that

19 action. There are a lot more unresolved
20 issues. And, we believe, in addition to
21 management time, we'll spend several
22 hundred thousands of dollars in preparing
23 that case for decision. So for 2001,
24 what we're offering is mediation -- to
25 modify the stay for mediation, but

1 DELPHI CORPORATION 117
2 nothing more than that.

3 THE COURT: Okay. Well, I pose
4 the same question to both of you, which
5 is, is this -- is the request in respect
6 to the 2001 action, at this point, in any
7 event academic because it's going to be
8 in mediation anyway, or are there some --
9 is there some right to opt out of the
10 mediation with regard to certain
11 defendants?

12 MR. BUTLER: I believe there's
13 always the ability to have a mediation
14 come to a conclusion, Your Honor.

15 THE COURT: Well, I don't know but,

16 I mean, courts of appeal don't generally
17 like to hear things piecemeal. If
18 everyone's mediating I would assume that
19 they're not going to hear it as to one
20 party --

21 MR. BUTLER: Your Honor, our papers
22 suggested the 2001 is premature at this
23 time. But I'm just simply saying, to
24 make it clear --

25 THE COURT: In any event, you're

1 DELPHI CORPORATION 118
2 prepared to do the mediation?

3 MR. BUTLER: Absolutely, Your
4 Honor.

5 THE COURT: Okay. All right.

6 MR. BATTAGLIA: Good afternoon,
7 Your Honor, Christopher Battaglia,
8 Halperin Battaglia Raicht, on behalf of
9 ATI. Your Honor, my understanding is
10 that the mediation is already in process.
11 I think that there was an initial meeting
12 earlier this week or the end of last week
13 that the debtor's was participating in.

14 I will confirm for the record that what
15 we are looking for, and I think I
16 confirmed that earlier on to an associate
17 in Mr. Butler's office and in the papers,
18 that we are only seeking to move forward
19 with these appeals. We just want to get
20 a decision in these appeals. We're
21 tickled pink that they'll, you know,
22 agree to the entry of an order lifting
23 the stay in the 2003 appeal. But we do
24 want to move forward with briefing in the
25 2001 appeal. I think that both sides

1 DELPHI CORPORATION 119
2 agree on the law that needs to be applied
3 and the Sonnex Industries issues --
4 THE COURT: But there's no stay of
5 -- there's no separate stay of briefing
6 given that the other 25 defendants are
7 engaged in mediation?
8 MR. BATTAGLIA: Well, the stay is
9 for all the parties, Your Honor. And
10 that's our problem. I mean, the whole -

11 -

12 THE COURT: But given the -- I
13 mean, so, I guess that the appellate
14 court hasn't had to deal with this issue
15 because the bankruptcy stay is in place.

16 MR. BATTAGLIA: And they are
17 looking for guidance from this Court to
18 say specifically --

19 THE COURT: I mean, if everyone's
20 mediating anyway, why force people to
21 write briefs and have it be argued by the
22 appellate court?

23 MR. BATTAGLIA: I can't speak for
24 the Federal Circuit, Your Honor. It's,
25 you know, I understand the position but,

1 DELPHI CORPORATION 120

2 you know, my client's unduly prejudiced
3 by this. It's -- and I have to imagine
4 that the estate --

5 THE COURT: But they're mediating.
6 Why are they unduly prejudiced? They're
7 mediating.

8 MR. BATTAGLIA: Well, I don't know

9 how far the mediation is going to go,

10 Your Honor. I don't know how long --

11 THE COURT: Well, then you could

12 come back.

13 MR. BATTAGLIA: -- it's going to

14 take.

15 THE COURT: But you can come back.

16 MR. BATTAGLIA: If that's, you
17 know, your decision, Your Honor, that's
18 it. But I, you know, listen, I'd like to
19 proceed. I think that we should start
20 briefing this issue and I don't think
21 that its a burden to the estate. I
22 mean, to say that it's going to cost the
23 estate 200,000 dollars, you know. I -- a
24 quick review of the operating reports
25 through February, shows that, you know,

1 DELPHI CORPORATION

121

2 that this estate has burned over 50

3 million dollars worth of fees. 200,000

4 dollars in the context of those numbers,

5 Your Honor --

6 THE COURT: Well, they add up.

7 MR. BATTAGLIA: Oh, sure they do.

8 Oh, they certainly do. They certainly
9 do. And, you know, Skadden Arps or the
10 Butler Law firm as it was AKA. Listen,
11 they're arguably the largest, the most
12 prestigious firm in the world. I'm quite
13 sure they have all the horses they need
14 to get this thing accomplished. I can't
15 imagine that this is going to be a major
16 imposition on the debtor to move forward
17 on this matter. If, again, if you look
18 at the Sonnex factors, overwhelming, we
19 have all the issues weighing in our
20 favor. It's already been --

21 THE COURT: All right.

22 MR. BATTAGLIA: I mean, you've got
23 to admit also --

24 THE COURT: If it weren't in
25 mediation, I might agree with you. But

1 DELPHI CORPORATION

122

2 that, I think, changes everything.

3 Because the Sonnex factors compare

4 litigation in one court versus litigation
5 in the bankruptcy court.

6 MR. BATTAGLIA: Sure.

7 THE COURT: And if there's one
8 thing that all courts agree on is, it's
9 better to have a consensual resolution of
10 disputes that are otherwise teed up for
11 litigation. And I think that's the
12 distinguishing factor here. I think
13 that's why the debtors agreed to the 2003
14 and not to this one. I'm inclined --
15 I'll deny this. You can always renew it
16 if the mediation -- I mean, I'll deny it
17 on the terms that the debtor's agreed to.
18 And if the mediation falls apart, then
19 you could come back and convince me that,
20 at that point, the Federal Circuit should
21 deal with it as an, you know, an expert
22 court and dispose of it. But I think
23 that, of course I can't predict what an
24 appellate judge on the Federal Circuit
25 would say, but I think they'd be pretty

1 DELPHI CORPORATION 123
2 puzzled if I lifted the stay here to -- I
3 mean, they'd say why is this judge
4 encouraging these parties to file briefs
5 in front of me, so, while they're all
6 mediating. So, I'll grant the motion
7 insofar as it seeks relief from the
8 automatic stay through the pending appeal
9 in the 2003 action. And insofar as the
10 automatic stay would apply to the
11 mediation, although I'm not sure it does
12 apply, but to the extent it does apply,
13 I'll lift the stay, and the record will
14 reflect that if the mediation is
15 unsuccessful, you can certainly come
16 back.

17 MR. BATTAGLIA: Thank you, Your
18 Honor. I'll submit an order later on
19 today.

20 THE COURT: Okay. Okay. All
21 right. So then we go to --

22 MR. BUTLER: We move to matter 14,
23 Your Honor.

24 THE COURT: Right.

25 MR. BUTLER: And matter 14 is the

1 DELPHI CORPORATION 124

2 committee's motion to compel production
3 of GM documents where I think there's
4 been an agreement among the principal
5 parties. Docket number 2961.

6 THE COURT: Okay.

7 MR. ROSENBERG: Yes, Your Honor. A
8 stipulation which we are asking you to so
9 order was submitted jointly by General
10 Motors and the committee to your chambers
11 yesterday. Essentially, it grants the
12 right of the committee to take 2004
13 examinations of GM but completely leaves,
14 beyond that, to the parties for
15 negotiation the sculp extent timing of
16 production, etcetera, etcetera. So that
17 the Court will be burdened only if the
18 parties cannot agree, we'll come back to
19 Your Honor for rulings.

20 THE COURT: Okay.

21 MR. ROSENBERG: Thank you.

22 MR. BUTLER: Your Honor, on that
23 aspect of this matter. The debtors had

24 requested that the Court in its -- our
25 papers that we filed -- that the Court

1 DELPHI CORPORATION 125
2 conditions approval of the stipulation
3 filed by GM and the creditors' committee
4 on the provision of the debtors that the
5 product of such discovery, as well as the
6 notice of and the pre-revision of the
7 party to further discovery requests, if
8 any -- we've had that conversation with
9 the committee and General Motors.
10 They've agreed to do that. It doesn't
11 need to be in the order and the intention
12 was to make sure that -- and we're not
13 seeking, and I'll say again to the record
14 what I've said to both of them privately.
15 The debtor's not seeking to interject
16 ourselves into the private negotiations
17 they're going to have over the scope.
18 But as the debtors-in-possession and the
19 fiduciary in this case, we do want the
20 product of what that resolves.
21 THE COURT: So, whatever comes out

22 you'll get.

23 MR. BUTLER: Whatever comes out we

24 get. If there is anything other than --

25 if there's any discovery beyond just

1 DELPHI CORPORATION

126

2 document discovery, we get to participate

3 in that. But what we're not doing is

4 negotiating what that is. That is

5 between the committee and General Motors

6 as to their issues. If we have separate

7 issues between us and General Motors, in

8 terms of information requests that we

9 can't otherwise resolve, we can -- either

10 of us can always come to the Court.

11 That's not what we're doing. We've --

12 there is a pretty good track record in

13 this case between the company and General

14 Motors and between the company and the

15 committee on our information request.

16 So, we're not before the Court in that

17 matter.

18 THE COURT: Okay. All right.

19 MR. KESSLER: Michael Kessler from
20 Weil, Gotshal & Manges for General
21 Motors. And just to clarify what Mr.
22 Butler said, if there happens to be a
23 dispute as to the scope or timing of
24 documents between the committee and
25 General Motors, we -- our understanding

1 DELPHI CORPORATION 127

2 of the agreement to turn over documents
3 to the debtors is that the debtors do not
4 inject themselves into that dispute --

5 THE COURT: Right.

6 MR. KESSLER: -- before this Court.

7 THE COURT: Right. Right.

8 MR. KESSLER: And so whatever comes
9 out between the committee and the debtors
10 -- excuse me, and General Motors, we will
11 furnish to the debtors.

12 THE COURT: Okay.

13 MR. EATON: Your Honor, Frank Eaton
14 of White & Case on behalf of Appaloosa
15 Management. As the Court may be aware,
16 we filed a joinder into the committee's

17 motion seeking to compel 2004 examination
18 of General Motors. We had requested,
19 separately, to get a copy of the
20 stipulation and order prior to being
21 served to the Court. And we were not
22 granted that request. By way of
23 background, Your Honor, on March 21st
24 this Court entered an order approving the
25 -- or directing the U.S. Trustee to form

1 DELPHI CORPORATION 128
2 an equity committee. Recognizing that
3 time was of the essence, the Court issued
4 its bench ruling on the same date and
5 entered an order granting the motion on
6 March 30th. Paragraph 5 of the order,
7 Your Honor, is germane to our request to
8 join into the relief. Paragraph 5
9 states, the equity committee, once
10 appointed, needs to be informed of and to
11 relate to the debtors and other parties
12 in interest in these cases, the equities
13 committee's view with respect to, among

14 other things, issues involving labor,
15 pension, OPEB and GM, need to be informed
16 in respect of agreements that the debtors
17 may reach with the unions or GM. The
18 equity committee should not inject itself
19 into negotiations between or among the
20 debtors, the unions or GM. Thereafter,
21 Your Honor, on March 30th, the U.S.
22 Trustee submitted, or filed a letter with
23 this Court, which we understand is to be
24 distributed, or is being distributed to
25 all of Delphi's over 300,000

1 DELPHI CORPORATION 129
2 shareholders, to solicit interest in
3 serving on the committee. Responses to
4 that request are due on March 24th, 2006.
5 Accordingly, we believe that it is highly
6 unlikely that an equity committee will be
7 formed and organized before the first of
8 May.
9 With respect to the scope of what
10 the creditors' committee is seeking from
11 General Motors, we believe all those

12 documents are germane and relevant to
13 both Appaloosa and the equity committee,
14 when it is formed. For example, they
15 seek --

16 THE COURT: Well, let me stop you.

17 MR. EATON: Sure.

18 THE COURT: What is the authority
19 to join in a 2004 motion?

20 MR. EATON: I'm sorry, Your Honor?

21 THE COURT: What is the authority
22 to join in and make it your motion?

23 MR. EATON: Your Honor, because we
24 are a party in interest.

25 THE COURT: No, no. What is the

1 DELPHI CORPORATION 130
2 authority under the Bankruptcy Rules? I
3 understand people often file things where
4 they say they join in this motion.
5 And generally what that means is, we
6 agree with what they say, and we want you
7 to hear about it, Judge. Like, a couple
8 of the -- and in fact, Appaloosa may have

9 done this, in respect of the responses on
10 the matter that I'll be hearing this
11 afternoon said, we have the following
12 objections and also we join in the
13 objections that so and so is making. And
14 when I receive those types of things, I
15 say to myself, okay, they just didn't
16 want to write it again so they said, "us
17 too." But that doesn't mean they're
18 making a motion and it doesn't prevent
19 the person who makes the motion from
20 settling the motion. So what -- if
21 you're merely looking to piggy-back on
22 the committee's motion, where's the
23 authority for that?

24 MR. EATON: Your Honor, I
25 understand that question and most likely

1 DELPHI CORPORATION 131
2 we should have, independently, filed a
3 motion. But given the expedience nature
4 of these Chapter 11 cases and the fact
5 that the equity committee is not yet
6 appointed, our belief was that we should

7 certainly be in a position, at least the
8 equity committee, to begin receiving
9 documents on a real-time basis once that
10 production is made. And I understand
11 both --

12 THE COURT: In my view the equity
13 committee can, in all likelihood, obtain
14 those documents when it is formed, just
15 as the debtor's getting them.

16 MR. EATON: Well, Your Honor, that
17 is why we're here today. We would like
18 to have that understanding.

19 THE COURT: But they're not formed
20 yet. So, I think -- I don't think
21 there's any order I can really enter
22 today. But I would be pretty surprised
23 if the debtor and the committee and GM
24 said that, you know, as far as obtaining
25 the production that was received, subject

1 DELPHI CORPORATION 132
2 to if there are confidentiality
3 agreements entered into as part of the

4 production committee professional --
5 committee lawyers signing on to those
6 agreements, that they'd get the same
7 stuff.

8 MR. EATON: Your Honor --

9 THE COURT: But, I think to, you
10 know, provide it to someone other than
11 the committee before then is not
12 appropriate.

13 MR. EATON: Your Honor, I
14 appreciate the message that you have sent
15 to the parties in interest and once the
16 committee is formed, whoever represents
17 them will, I'm sure, communicate with the
18 parties in interest and come up with an
19 appropriate resolution.

20 THE COURT: Okay.

21 MR. EATON: Okay. Thank you, sir.

22 THE COURT: Okay. All right. So
23 that stipulation will get entered.

24 MR. ROSENBERG: Thank you, Your
25 Honor.

2 MR. BUTLER: Your Honor, the last
3 matter before the lunch -- scheduled
4 before the lunch recess is matter number
5 15 on the agenda. It's our motion. The
6 joint interest agreement motion in which
7 we're seeking approval of a joint
8 interest agreement between the creditors'
9 committee and the debtors. It's found at
10 docket number 3000. There was a limited
11 response which really constitutes an
12 objection filed by General Motors at
13 docket number 3096. Your Honor, this
14 joint review or joint interest motion,
15 which is something that we have had
16 entered in other districts and in this
17 district in other complex Chapter 11
18 cases, is designed to provide an
19 extension of the privilege and to make
20 clear that we can share with our co-
21 fiduciary a wide variety of information
22 relating to a particularized subject
23 matter. And in this case, and I'll
24 confirm on the record what I confirmed to
25 General Motors earlier, is this -- this

1 DELPHI CORPORATION 134

2 motion deals with only the matters that
3 are described in and defined as the
4 investigations. And the intention here
5 is to provide this information in a
6 manner, to the committee, and share this
7 information with the committee on a joint
8 basis so as the co-fiduciaries in the
9 case, we can devise a strategy on how to
10 manage these issues and ultimately how to
11 develop a plan of reorganization, which
12 will surely address most of the matters
13 that are the subject of these
14 investigations.

15 As a -- I think it goes without
16 saying, but I will say it nonetheless,
17 working with the committee as a co-
18 fiduciary, we have some burdens to
19 convince the committee on issues raised
20 in the investigative arena here, that the
21 debtors have done the right thing.
22 You've heard me stand up before, Your
23 Honor, in the course of this case and
24 say, you know, Judge, the debtors here

25 are doing the right thing. We are taking

1 DELPHI CORPORATION 135

2 these matters seriously. And you've
3 heard, you know, objectors like Appaloosa
4 say, well, how do you know? Well, one of
5 the ways that we do this is we've been
6 working closely with the committee on
7 these issues and there is an obvious
8 issue that comes up. And one of them is
9 that when we talk about certain, very
10 sensitive issues, you know, Mr. Rosenberg
11 and his colleagues say, well, hey, we'd
12 like to know a little more. And we say,
13 well, we'd like to tell you a little more
14 but if we go too far here, were not --
15 what we're not trying to do is compromise
16 the estate vis-a-vis non-fiduciaries.
17 And therefore, the device that we've
18 used, it's been entered here by Judge
19 Lifland in several cases that I've been
20 involved in and other folks in this
21 district and other judges in other

22 districts is a joint review approach that
23 allows us to share information on this
24 particularized subject on the basis
25 described in the order. And it has, I

1 DELPHI CORPORATION 136
2 think, obvious benefits to the estate.
3 It allows us to give a deep dive for the
4 creditors' committee so that they can
5 understand and be comforted that, for
6 example, with respect to the
7 investigations, the company has separated
8 wrong-doers from the reorganized
9 businesses so that that's not a concern
10 to the creditors' committee. To also
11 assure them that we've developed
12 appropriate plans for the implementation
13 of internal controls that are reasonably
14 designed to protect the recurrence of
15 some of the issues that have been raised.
16 And that we have provided adequate
17 information to the committee so that it
18 can make informed understandings as we
19 negotiate, candidly as currency in a

20 plan, how to the estate's claims against
21 third parties ought to be both measured
22 and dealt with. And who ought to do
23 that. And for whose benefit in terms of
24 the estate. And typically, without
25 allowing the creditors' committee's

1 DELPHI CORPORATION 137
2 professionals the ability to make those
3 assessments. It's very difficult to work
4 yourself through those issues.

5 THE COURT: And in each of those
6 issues, it's conceivable, certainly, that
7 either by agreement or otherwise, the
8 committee could actually step into the
9 debtor's shoes, so --

10 MR. BUTLER: Absolutely, Your
11 Honor. In fact, one could imagine, I
12 mean, you know, we will -- one of the
13 subject matters of our negotiation will
14 be under what circumstances that ought to
15 happen. I mean, we clearly are aiming
16 towards an emergence in 2007, which we

17 hope to have the support of our major
18 stakeholders, led by the creditors'
19 committee in connection with a plan.
20 That plan will clearly address the claims
21 related to these investigative matters.
22 And how and whom and for whose benefit
23 those claims are dealt with and pursued
24 will be an aspect of that plan.
25 THE COURT: Okay.

1 DELPHI CORPORATION 138
2 MR. BUTLER: And, Your Honor, we
3 think it's fundamental to our ability to,
4 sort of, work through this as Your Honor
5 has described, very complex puzzle. It's
6 our -- we think it's important to have
7 the ability to do this. And we also
8 believe that it is important. And
9 frankly, in some respects -- we've done
10 this before in other cases when we've
11 concluded that, as a strategic matter,
12 it's important to have a demonstration of
13 faith with the committee. Okay. You
14 want, you know -- you want to understand

15 just how complex this is, here is what
16 we've been thinking about. Well, you
17 can't do that without this Court entering
18 an order that protects the privilege on
19 those issues.

20 THE COURT: Okay.

21 MR. BUTLER: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. KESSLER: Your Honor, Michael
24 Kessler again, for General Motors. Your
25 Honor, we filed a limit -- filed a

1 DELPHI CORPORATION 139
2 limited objection to this motion which we
3 thought would be non-controversial and
4 merely ask that the debtors and the
5 committee include some language in their
6 order to insure that the so-called joint
7 interest, or common interest that they
8 describe in their motion, would not be
9 expanded beyond what it was. And we got
10 some objection to our proposal which
11 makes me feel like we hit a nerve and

12 maybe there is something to be more
13 suspicious about than we had originally
14 anticipated. Let me start by saying that
15 there is no case law in this circuit that
16 provides for a joint interest, or common
17 interest at large between creditors'
18 committees and debtors. The joint
19 interest or common --

20 THE COURT: But they're not seeking
21 that -- any ruling on that here.

22 MR. KESSLER: No, I understand.
23 And the joint interest and common
24 interest doctrine in this circuit in
25 bankruptcy cases between a creditors'

1 DELPHI CORPORATION 140
2 committee and a debtor is no better or no
3 worse than it is generally in litigation
4 in this circuit. Which is to say that
5 the cases outside of bankruptcy that
6 govern whether there is or is not a joint
7 interest, would govern whether there is
8 one between a creditors' committee and
9 debtor in this case. And what the cases

10 say is that the joint interest privilege
11 is exacting and clear. The parties
12 asserting that common interest must show
13 an identical, not merely a similar, legal
14 interest and cooperation directed towards
15 an identical legal strategy based on that
16 interest. Now, we've -- we're prepared
17 to concede, although I would tell the
18 Court that I don't agree that they have
19 demonstrated a joint interest for
20 purposes of the SEC investigation,
21 restatement, etcetera. We're prepared to
22 concede on that issue. And the whole
23 purpose, of course, for the joint
24 interest is to protect the attorney
25 client privilege with respect to

1 DELPHI CORPORATION 141
2 documents that may be exchanged between
3 the parties on that. What we want to
4 insure is that the order is very clear
5 that the common interest, or joint
6 interest, approved by the Court is

7 narrowly limited to that investigation as
8 they set it out and cannot be expanded by
9 the committee and the debtor to other
10 matters in this case. It may be, later
11 on in this case, that General Motors and
12 the debtors have the joint interest
13 against the committee.

14 THE COURT: Well, I think their --
15 I think their opposition was to the
16 placement of the phrase "narrowly limited."
17 I think that they don't object to saying
18 that this agreement pertains to the -- to
19 the investigation. And that nothing
20 otherwise, in the order -- I'm sorry,
21 leave out "otherwise." Nothing in the
22 order expands the scope of any common
23 interest privilege and I don't -- I think
24 those two things are fine. And I was
25 going to ask them whether, given the

1 DELPHI CORPORATION 142
2 possibility for someone else down the
3 road arguing what the "investigation"
4 really means, how burdensome is it to

5 keep a basic privilege log here so that
6 you have a record of what was shared so
7 that you can substantiate that, in fact,
8 the privilege wasn't waived. Those are
9 the -- I thought those were basically
10 three fair additions to the order, but I
11 wanted to hear --

12 MR. KESSLER: Well, I wanted to add
13 --

14 THE COURT: -- one or two parties
15 on the privilege log issue.

16 MR. KESSLER: I would like to add
17 the following, Your Honor. That they
18 can't unilaterally expand that joint
19 interest between themselves.

20 THE COURT: Well, he said he wasn't
21 going to do that.

22 MR. KESSLER: But these are the
23 provisions that we proposed putting in
24 the order to make clear.

25 THE COURT: Well, I know, but he

2 said he wasn't going to do that. And I
3 don't think he's -- I mean, he says, you
4 say, "it's limited." To my mind that means
5 they're not going to expand it because
6 it's limited. This order is limited to
7 the investigation.

8 MR. KESSLER: And, of course, the
9 other thing that we asked to put in the
10 order is that the sharing of privileged
11 documents does not preclude General
12 Motors from seeking discovery of factual
13 matters relating to this case.

14 THE COURT: Well, I don't think
15 there's any implication as to that either
16 way. I don't want to -- I mean, that's,
17 like, people reserving rights. I don't
18 think you need to have that in an order.

19 MR. KESSLER: So, if I'm hearing
20 correctly, you would provide that they
21 add to the order that they keep a
22 privilege log.

23 THE COURT: Well, I want to hear
24 them on that. I want to see how
25 burdensome that is. I mean, I don't want

1 DELPHI CORPORATION 144
2 to restrict the sharing of information.
3 But it seems to me, most of this infor --
4 this material is -- has already been
5 pored through and it is probably pretty
6 well organized. And I would think it
7 would be fairly easy to keep a record of
8 it. And probably a good idea, because if
9 it's not GM, then it may well be -- it
10 may well not be GM, other parties in
11 interest who want to assert the
12 privilege has been waived may well assert
13 that you gave more information than was
14 covered by the common interest privilege
15 dealing with the investigation. And so
16 this way you can show them, this is the
17 log. Or show me, and then --
18 MR. KESSLER: Of course the
19 sensitivity to this for us, Your Honor,
20 is that they will show the committee
21 privileged documents which the committee
22 will then have the benefit of. And the
23 committee can then use whatever
24 information is in those privileged

25 documents against General Motors. And we

1 DELPHI CORPORATION 145

2 wouldn't have access to the same
3 documents. That's why we're particularly
4 concerned about narrowing the joint
5 interest.

6 THE COURT: Well, okay.

7 MR. BUTLER: Your Honor, and I
8 think that fairly describes what the real
9 dispute here is. And, you know, reality
10 is, and Your Honor has seen this for
11 months now and will see it in spades this
12 afternoon, go forward. All of us, the
13 major stakeholders in this case, are
14 walking along doing a very delicate
15 balancing act, trying to jointly get
16 through to a common resolution which we
17 hope we can eventually achieve. But in
18 the meantime, everybody does try to react
19 to their best interest and General
20 Motors's position, with which the debtors
21 have respectfully but vehemently
22 disagreed, is that General Motors ought

23 to get all the information the committee
24 gets about everything. And General
25 Motors has not been happy with the

1 DELPHI CORPORATION 146
2 debtors because we've declined to do
3 that. And so, what we're trying to --
4 and again here, what we -- we believe
5 there are things that we should talk to
6 the committee about. And some of those
7 things, insofar as General Motors has
8 implicated many of the investigations,
9 may include General Motors; may not. I'm
10 not making a statement about that. It is
11 whatever the subject matter is defined by
12 the investigations. We're not going to
13 expand it. But I also don't want to
14 agree here. Your Honor, I think, wisely
15 said, you know, you're not ruling on
16 whether the committee and the company
17 have a, you know, more than -- something
18 better than or worse than third parties.
19 And General Motors wants you to conclude

20 that today. We think that's
21 inappropriate. I mean, we happen to
22 believe, and we think that the -- a
23 practice in this district and we actually
24 think the case law would support the fact
25 that there is a symmetry and respect

1 DELPHI CORPORATION 147
2 accorded by the Courts to the two co-
3 fiduciaries in the Chapter 11 case. It
4 is different than just third parties, but
5 we're not asking a Court, that Your Honor
6 issue a ruling in great detail on that
7 today. But we're also not trying to
8 limit it. Now, as to the privilege log,
9 the concern we have here is General
10 Motors's proposal was that they be able
11 to look at the log.

12 THE COURT: Oh no, that's not why
13 you --

14 MR. BUTLER: That was the proposal.

15 THE COURT: That's left for another
16 day to determine what's appropriate.

17 MR. BUTLER: And the whole point

18 here was to give anyone, including
19 General Motors, the ability to discover
20 exactly what we're talking about with the
21 committee, is counter-intuitive.

22 THE COURT: All right. There's a
23 whole body of law on how you deal with
24 privilege logs and -- what I'm suggesting
25 is this. That you keep one at this point

1 DELPHI CORPORATION 148
2 and then, how it's dealt with down the
3 road is another issue.

4 MR. BUTLER: Right. We track --
5 Your Honor, it is not burdensome for the
6 company to track the information we give
7 to third parties. We track it now.

8 THE COURT: Okay.

9 MR. BUTLER: And so we would be
10 tracking it in the ordinary course going
11 forward. We track. We get literally
12 hundreds, if not thousands, of
13 information requests from the major
14 stakeholders in this case and we have a

15 computer system how that's all dealt
16 with.
17 THE COURT: Okay. So it seems to
18 me that I should grant this. Well, I
19 have to stop before I say that. I have
20 another question. Paragraph 7 of the
21 order says that no discovery in respect
22 of the matters where they are subject to
23 the investigation shall be permitted
24 unless X, Y and Z. Is that -- who's that
25 supposed to apply to?

1 DELPHI CORPORATION 149

2 MR. BUTLER: You Honor, it's
3 supposed to apply to, essentially, to the
4 committee. It's not out to third
5 parties.

6 THE COURT: All right. It's not
7 implying to all third parties?

8 MR. BUTLER: No. What's intended -
9 - what's intended here --

10 THE COURT: All right. That's all
11 I wanted to know.

12 MR. BUTLER: Okay.

13 THE COURT: Okay. I just wanted to
14 make sure of that.

15 MR. BUTLER: And we've -- Mr.
16 Rosenberg and I have an understanding on
17 how that would apply.

18 THE COURT: Okay. All right.

19 MR. ROSENBERG: We've discussed it
20 ad nauseam.

21 THE COURT: All right. So, it
22 seems to me, then, that I should approve
23 this with -- in the appropriate place in
24 the order the following additions. One
25 is that this order applies to the

1 DELPHI CORPORATION 150
2 investigation, as you stated on the
3 record. Two, that the debtors will
4 maintain a privilege log identifying the
5 privileged material provided to the
6 committee. And you all know how to keep
7 a privilege log, so I don't think you
8 need to spell out anything more than
9 that. And then third, that nothing in

10 this order shall expand the scope of any
11 common interest privilege. You know, it
12 is what it is.

13 MR. BUTLER: Your Honor, can we
14 say, shall expand or narrow? I mean, I
15 just don't want the --

16 THE COURT: Oh, yeah. That's fine.
17 Yes.

18 MR. BUTLER: Okay. Thank you, Your
19 Honor.

20 THE COURT: Or shall alter.

21 MR. BUTLER: Or alter. Thank you,
22 Your Honor.

23 THE COURT: Okay. But with those
24 changes in, you probably want to show it
25 to Mr. Kessler as well as Mr. Rosenberg.

1 DELPHI CORPORATION 151

2 MR. BUTLER: I will show it to Mr.
3 Kessler.

4 THE COURT: Okay.

5 MR. BUTLER: And to Mr. Rosenberg.

6 THE COURT: Okay. So, how long do
7 you anticipate this -- did the last

8 hearing to last?

9 MR. BUTLER: I need some help from
10 Appaloosa on that. I think the -- I
11 think the -- my understanding is as --
12 vis-a-vis Wilmington Trust and the
13 committee, it is more in the way of
14 argument than evidence.

15 THE COURT: All right. Well, I
16 have a very strong desire to leave here
17 by 5:00 today. I have a commitment with
18 some ten-year-olds, unless it starts
19 raining. So, I think you should sort of
20 plan your time accordingly.

21 MR. BUTLER: I think we can live
22 within that, Your Honor.

23 THE COURT: I'm happy to come back
24 here at a quarter to two. That gives
25 enough people to get in and out of the

1 DELPHI CORPORATION 152

2 building at least, but they'll probably
3 get a little bit of lunch.

4 MR. BUTLER: Thanks, Judge.

5 THE COURT: Okay.
6 (Whereupon this hearing was
7 completed.)
8 (Time Noted: 12:53 p.m.)
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1 DELPHI CORPORATION 153
2 CERTIFICATION

3 I, Esther Accardi, hereby certify that
4 the foregoing is a true and correct
5 transcription, except where, as indicated, the
6 Court has modified its bench ruling, to the best
7 of my ability of the sound recorded proceedings
8 submitted for transcription in the matter of:
9 Delphi Corporation.

10

11 I further certify that I am not employed
12 by nor related to any party to this action.

13

14 In witness whereof, I hereby sign this
15 date:
16 April 11, 2006

17

18 _____

19 Esther Accardi

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1 154

2 I N D E X

3	Cross Examination by	Page	Line
4	Mr. Springer of Mr. Hoe	54	3-4
5	Mr. Springer of Mr. Kerr	61	20-21
6	Mr. Garfield of Mr.		
7	Sheehan	64	9-10
8			

9	Redirect Examination by	Page	Line
10	Mr. Garfield of Mr. Hoe	60	6-7

11

12 E X H I B I T S

13	Description	Page	Line
14	11 - Spreadsheet	62	10
15			

16 INDEX TO INSERTS

17		Page	Line
18	(NONE)		
19			

20 INDEX TO RULINGS

21		Page	Line
22	Retention Approved on an	28	2
23	Interim Basis		

24

25

